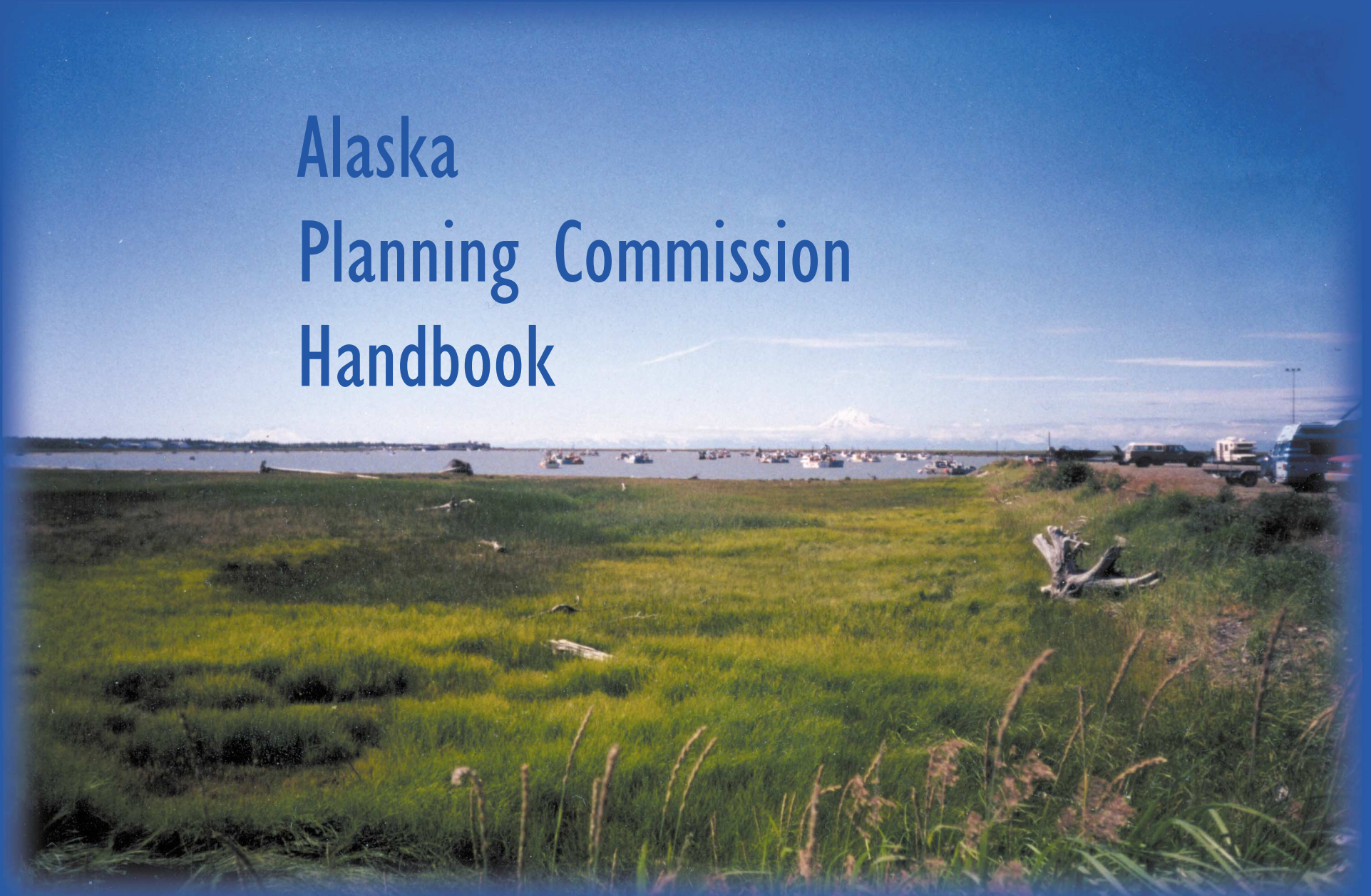


# Alaska Planning Commission Handbook



July 2003



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# Alaska Planning Commission Handbook



**Frank H. Murkowski, Governor  
State of Alaska**

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Department of Community and Economic Development

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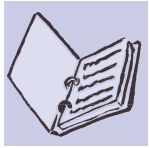
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July 2003

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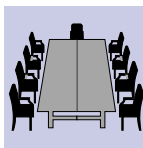
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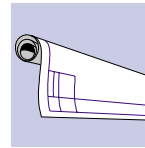
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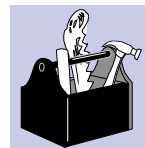
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## WELCOME TO THE PLANNING COMMISSION

Your life is almost certain to become more interesting now that you have agreed to serve on the planning commission. You will attend regular meetings, special meetings and work sessions, evaluate projects and proposals, and make tough decisions about community development projects and policies. You will encounter new terms and concepts; gain more knowledge about activities happening around town; and develop a greater understanding about government and public decision-making.

A good planning commissioner takes the future seriously, works hard, and is patient, and willing and able to make decisions. This handbook will help you understand the legal and policy framework for planning in Alaska's communities. It will also provide you with a reference for the powers and duties of the planning commission.

As a planning commissioner you must have some understanding of the following topics:

1. Comprehensive and other types of planning
2. Zoning and platting
3. How a planning commission operates
4. The authority and duties of the commission
5. Legal aspects of commission conduct
6. Standards for commission decision-making

The Planning Commission Handbook covers all of these topics. If you are new to the discipline of planning, you will want to read the sections in order. If, however, you understand the practice of planning and its applicability, you may want to use the handbook as a reference. Although being a planning commissioner will always be challenging, reading this handbook will make the challenge easier.

### About this Handbook

This handbook addresses the three major aspects of planning: 1) land use regulation and platting; 2) the discipline and practice of planning, and; (3) the legal context for planning decisions. The section in the handbook explaining the practice of planning covers the purpose of planning, problem-solving tools and other practical 'how to' aspects. The legal environment addresses constitutional, statutory, and ordinance provisions that limit or guide planning commission actions.

At the end of this handbook is a bibliography of publications, articles and other resources that may be useful to you. Your planning department may have copies you can borrow. Also at the end of this handbook is a reference to most of the statutes that govern Alaska planning commissions. Always check to make sure the statutes on file with your community are the most current. The State of Alaska Department of Community and Economic Development has many planning resources you can access through its website.



## What you Need to Know About a Planning Commission

- What is a Planning Commission?
- Authority for Planning in Alaska
- Composition of the Planning Commission
- Duties of the Commission
- Why do Communities Need to Plan?
- A Brief History of Planning, Platting, and Zoning

## WHAT YOU NEED TO KNOW ABOUT A PLANNING COMMISSION

### What is a Planning Commission?

The planning commission is a body of citizens that serve local government. The commission is an advisory group to the governing body on issues and activities related to planning, platting, and land use regulation and community development in general. The planning commission is responsible for keeping planning and land use-related topics and issues in perspective for the community and should not become lost in the daily decisions and details of life.

### Authority for Planning in Alaska

Alaska State law requires that home rule, first and second class boroughs, unified municipalities, and first class and home rule cities outside of boroughs provide planning, platting and land use regulation. All other classes of municipalities (second class cities) may, but are not required to, exercise these powers. For communities within the Unorganized Borough, the State Department of Natural Resources (DNR), Division of Mining, Land, and Water Management, acts as the platting authority.

Depending on a city's or a borough's classification, the state statutes governing planning have different applications. Descriptions of local governments and

authorities granted to them are provided here to help you understand where your municipality "fits."

### *Municipal Government in Alaska*

In Alaska there are only two forms of municipal government: cities and boroughs. The term "municipality" is the generic term that encompasses all classes and forms of cities and boroughs.

There are three classes of cities: first class, second class and home rule. There are four classes of boroughs: first, second, home rule and unified home rule. The unified home rule municipality is a borough in which all cities within its boundaries have been dissolved and which has adopted a home rule charter under a special procedure in Title 29.

### *Home Rule verses General Law Municipalities*

All of the municipalities in Alaska fall into one of two categories. They are either general law or home rule. General law municipalities (first and second class cities and first and second class boroughs) must comply with all the relevant provisions of the state statutes that govern municipalities. Most of these statutes are assembled together and are found in Alaska Statutes (AS) Title 29, commonly known as the State Municipal Government.

Home rule municipalities are cities and boroughs that have adopted a home rule charter. Many of the provisions of Title 29



that govern general law municipalities do not apply to home rule municipalities. For example, the statutory standards (AS 29.40.019 – 29.40.200) that must be met for granting of a variance by a general law municipality do not apply to variances granted by a home rule municipality. The home rule municipality may set its own standards for granting the variance.

### *Cities Inside and Outside Boroughs*

There is also a major difference between cities that are inside a borough and those that are outside. All boroughs, both general law and home rule, must exercise planning powers on an areawide basis, that is, both inside and outside its cities. Therefore cities, whether general law or home rule, inside a borough have no planning, platting, or land use regulation authority. However, AS 29.40.010(b) authorizes a borough to delegate to a city any of its powers and duties that are governed by AS 29.40 (the chapter of the Municipal Government that governs the exercise of planning, platting, land use regulation). A number of cities within boroughs have been delegated some or all of their borough's planning and land use regulation powers.

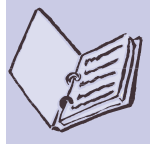
A home rule city inside a borough has only those planning and land use regulation powers granted to it by the borough. Unless the borough is home rule, the exercise by a home rule city of delegated powers would still be governed by the provisions of Title 29 because the borough can delegate only those powers it possesses, and it possesses only general law borough powers.

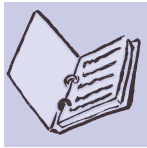
Home rule cities that are outside boroughs must exercise planning, platting, and land use regulation powers but, with minor exceptions, are not governed by AS 29.40. First class cities outside boroughs must and second class cities outside boroughs may exercise these powers as provided in AS 29.40.

## **Composition of the Planning Commission**

Each city or borough establishing a planning commission passes an ordinance that identifies the number of members, their qualifications, their duties, how vacancies are filled, the frequency of regular meetings, who serves as their staff, and general operating procedures. One of the first things you should do as a new commissioner is to review the local ordinance establishing your planning commission.

A general law municipality is required to establish a planning commission consisting of five residents unless the ordinance establishing the commission requires a greater number of members. Members of a planning commission in a general law municipality are appointed to three-year terms by the mayor, subject to confirmation by the legislative body. The assembly or city council may interview planning commission applicants before confirming an appointment. If one or more home rule or first class cities within a general law borough have sufficient population to entitle the city to a seat on the commission,





the borough mayor must make that appointment from a list of recommendations submitted by the city council. A home rule municipality may establish its own method for appointment, terms, and number of members.

## Duties of the Commission

State statute (AS 29.40.020 (b)(1) and (2)) and local charters or ordinances define the authority and responsibilities of the planning commission – duties, number of commissioners, term and manner of appointment, etc. Some planning commissions also have bylaws that provide further detail.

The duties of the planning commission will vary from community to community depending on factors such as support for planning on the governing body, the community's rate of growth, prospective infrastructure development responsibilities prescribed by ordinance, and community attitudes about planning.

The following list of duties shows the range of activities with which a planning commission may become involved.

### *Prepare a Comprehensive Plan*

The comprehensive plan, which is discussed in more detail in the next chapter, contains policy statements about community development and a map displaying intended land-use in the community. It can be the most important document the

commission will prepare. If properly prepared and followed, the plan will be the blueprint for making land-use and development decisions for many years.

### *Act as the Platting Authority*

As the platting authority, the planning commission reviews and approves subdivisions, minor or short plats, and replats, as well as dedications, and vacations of public land, rights-of-way, and easements.

### *Review and Recommend Land Use Regulations*

Land-use regulations are a way to implement the comprehensive plan. The commission is closely involved in the preparation and amendment of land use regulations and other implementation methods and provides recommendations to the city council or assembly. Alaska Statute (AS 29.40.040(a)(3)) permits the preparation of other regulatory measures that further the goals and objectives of the comprehensive plan, such as design review, overlay zones, or regulations for development on steep slopes or floodplains.

### *Review and Recommend the Rezone of Property*

The commission reviews proposed zoning changes and recommends to the city council or assembly whether a zoning change should be granted. The city council or assembly has the final decision, since rezones are approved by ordinance. Rezones, if approved, occur as amendments to the official zoning map.

*Act on Variances and Conditional Use Permits*

The commission has the authority to approve or deny applications for variances and conditional use permits. These terms are defined in the glossary and their review by the commission is explained in Chapter Six, Plan Implementation.

*Review and Advise on Land Acquisition and Disposal*

Many municipalities have received land entitlements from the State. Others have or will receive land under the provisions of the Alaska Native Claims Settlement Act. The planning commission may review plans and make recommendations on what land should be acquired or disposed and how the land should be used.

*Hear Appeals from Administrative Decisions*

Title 29 [AS 29.40.050 (a) and (b)] authorizes the creation of a Board of Adjustment to hear appeals from "an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter." Typically, the city council or borough assembly is authorized by ordinance to act as the Board of Adjustment; however, the planning commission may also be authorized by ordinance to hear appeals from administrative decisions.

*Review and Recommend Capital Improvements*

Most planning commissions review and comment to the city council or assembly on the municipality's capital improvements program. Since the commission is regularly involved in decision-making about community development, it has a good sense of the municipality's development needs. The commission will also have a good perspective on the relationship between capital projects and the goals and objectives of the comprehensive plan.

*Review the Annual Planning Budget*

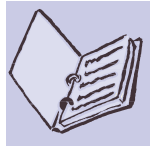
The commission works closely with planning staff and has an interest in funding for planning programs. The commission should review the planning budget and provide recommendations to the city council or assembly before they adopt it.

*Review and/or Help Develop the Planning Department's Annual Work Program*

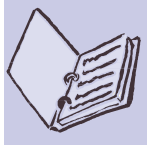
The commission should help prepare and/or review the planning staff's annual workload so that the work plan reflects municipal and commission priorities.

*Hold Public Meetings and Hearings*

This may seem too obvious to mention; however, it's perhaps the most important activity the commission undertakes. Public meetings and hearings provide an opportunity for direct interaction between the commission and local residents. It gives local residents an opportunity to see

**How does planning assist with community development?**

- Shapes the future
- Identifies issues
- Finds out people's values
- Ties programs together
- Gets the public involved
- Attracts better development
- Increases certainty
- Protects natural resources
- Provides more efficient public services
- Minimizes land use conflicts
- Promotes good design



the commission "in action," and it gives commission members the chance to hear first-hand about residents concerns.

### *Initiate Planning Projects*

The planning commission can initiate planning projects when it recognizes a problem or a need. Projects requiring significant staff time or budget appropriations will need city council or assembly approval.

### *Coordinate with Other Agencies' Plans*

State and federal agencies undertake planning and capital construction projects that can significantly impact a municipality. The commission may want to review these projects and provide recommendations to the city council or assembly.

### *Other Duties as Authorized by Ordinance*

The city council or assembly may grant the commission authority that is not mentioned in this listing. This could include, for example, recommending building codes, a street numbering system, or recommending the condemnation of hazardous buildings.

### *Why do Communities Need to Plan?*

Communities can realize tangible benefits from planning.

### *Planning Saves Money*

A community can achieve efficiencies in operating government as the result of good planning decisions. For example, construction of a residential subdivision at a long distance from services will prove costly. Residents of the development may request water and sewer, fire, police, road maintenance, and the other services already provided in developed areas of the community and place unanticipated demands on the budget. The same development located adjacent or near to existing services would create a lower long-term demand on the budget through reduction in utility extension costs, maintenance, and related manpower requirements. In other words, water and sewer lines, streets, and other improvements can be more efficiently constructed when planned in advance. Preparation for growth can often result in lower taxes for necessary services.

### *Planning Establishes Ground Rules*

Planning establishes ground rules and standards for developers and residents alike. If a community has a comprehensive plan and land use regulations, this gives a clear signal that accepted standards and procedures apply to community development. Developers know the ground rules, and the public knows the standards that will apply during the evaluation of a proposal. Having ground rules will not eliminate conflicts, but everyone involved or interested in a development activity will be "reading from the same page."

### *Planning Can Promote and Support Economic Development*

The planning process allows residents and decision-makers to examine alternatives and choose courses of action that can promote employment and economic well-being. The City of Kenai, for example, included development of an important city-owned property as a key planning element in its comprehensive plan. By doing this, the City was able to reach out to the broader community to determine the importance and value of the property and how it might be developed to benefit the community.

### *Planning Provides a Forum for Reaching Consensus*

Achieving consensus is a vital aspect of community planning. A planning effort should involve a broad segment of the population to assure that all community groups are heard. This gives the community a sense of "ownership" in the planning process. A comprehensive plan should be consistent with community values. Community-wide consensus has not been reached if a plan is drawn up by a small group of people who basically agree with each other. It is only when differing viewpoints and values are brought together and the forces of negotiation, persuasion, and compromise are at work, that true planning takes place. Consensus in this context means the formulation of goals to which a majority (or more) of the community will agree.

### *Planning Can Promote Good Design*

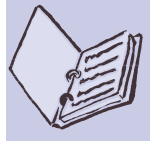
Community design is the deliberate process of building the community on the basis of agreed-to architectural, aesthetic, and other objectives. It represents an effort to create a proportional balance between the man-made and the natural environments.

### *Planning Can Protect Property and Property Values*

Planning can protect property and property values by separating a potentially harmful or disagreeable land use from surrounding residential and commercial uses and by helping to protect stable neighborhoods. For example, building setbacks promote fire safety. Planning can promote stable neighborhoods and help homes retain their values. Property values can also be enhanced when the community plans for parks, trails, playgrounds, and other amenities. Maintaining or enhancing property values help support revenues in municipalities that levy a property tax.

### *Planning Can Reduce Environmental Damage and Conserve Resources*

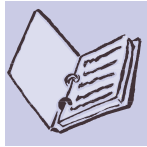
Planning can help a community identify areas where development may be inadvisable because of environmental conditions. These conditions may include avalanche or landslide hazards, areas vulnerable to earthquake damage, stream bank erosion, or other conditions that could threaten development with damage or destruction. For example, buildings in areas that flood repeatedly create recurring problems that could have been avoided if the buildings



“ Nothing is permanent but change. ”

Heraclitus





were properly located or constructed in the first place. Using a planning process, areas that have important habitat or wildlife values can be classified. Measures can then be adopted to protect, conserve, and enhance those values. Some communities located within Alaska's coastal zone use the coastal management planning process to achieve this. Other communities coordinate their planning efforts with those of fish and wildlife management groups and agencies.

## **A Brief History of Planning, Platting, and Zoning**

Community planning in the United States is not a new concept. Colonial Philadelphia, Williamsburg, and the new capital of Washington, D.C. were "planned" towns where the streets and public buildings were designed before development began. These cities followed the model established by European cities that incorporated an overall design in their development. Boulevards were arranged in relation to monumental public buildings and extensive parks to enhance the visual impression of the city. These designs were the work of architects who worked much the same way a painter designs a canvas. The concept of community design continued in the United States until the early 1900s.

Community planning began in earnest in the 1930s and 1940s as federal expenditures helped fund numerous planning studies. With the passage of Section 701 of the

Federal Housing Act in 1954, local planning activity increased dramatically. Many communities used the "701" moneys to create community plans to meet both the federal funding requirements as well as deal with local issues. The program was discontinued in 1981.

Passage of the Housing Act was followed closely by many federal programs that strongly influence community development. Programs included the Urban Redevelopment Administration and the Overall Economic Development Program in the 1960s, the Coastal Zone Management Act in the early 1970s, the Intermodal Surface Transportation Enhancement Act (ISTEA) in the 1990s, and the Transportation Enhancement Act of 2001 (TEA 21). There was also other federal legislation that offered money or encouragement for community and regional planning. The Alaska Coastal Management Program (ACMP) was a direct result of these federal initiatives and provided many communities with resources for community planning. Other communities in Alaska have received resources for community planning through state grant programs and local budgets.

State provisions for planning came with the adoption of Alaska Statute Title 29 in 1959 (listed under Territorial Law of 1913 as municipal code) and Title 38 in 1959. Title 29 set forth provisions for comprehensive planning, platting and zoning at the city



and borough level in Alaska. Title 38 set forth platting requirements of the State of Alaska Department of Natural Resources (DNR) which is the platting authority inside and outside municipalities where there is no platting authority.

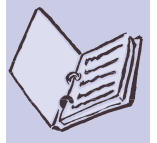
Zoning gained acceptance and legal validity as a tool to guide overall city development in 1926 following the U.S. Supreme Court decision Ambler Realty v. City of Euclid. Zoning was a reaction to the rapid growth of cities, where original town designs were being outstripped by the rate of expansion. Conventional zoning assigned a development designation or use to every acre of land. These designations generally included residential, commercial, or industrial. The separation of certain uses and buildings through zoning protected property values and avoided unsafe mixtures of residential and industrial districts.

The primary force behind land subdivision control came from the Standard City Planning Enabling Act of 1928 (Act). The Act provided for planning commission approval of plats. The plat review process helped assure that residential streets would have adequate capacity to handle future traffic and that lots would be of adequate size and shape and have frontage on a public way. Prior to 1928, the main purpose of subdivision regulation was to provide a more efficient method for selling land by permitting a seller to record a plat which divided a large parcel of land into sequentially numbered blocks and lots.

Sales of land were then recorded in the office of the county clerk. Following World War II, subdivision regulation entered another phase with emphasis shifting to the needs of new subdivision residents for public open space, parks and recreation facilities, and adequate streets bordering the subdivision. Local regulations now imposed requirements for mandatory dedication of roads, parkland, school sites, and open space. By 1968 over 95 percent of municipalities of 5,000 population or more had adopted subdivision control ordinances based on state statutes modeled after the Act.

In more recent years, communities have used subdivision regulations to guide growth and to manage development until adequate public facilities are in place. Others have used subdivision controls to preserve natural features such as wetlands, floodplains, and sensitive habitat areas or to achieve other environmental goals such as the control of erosion or stormwater runoff.

Today, Alaskan communities are planning for a variety of reasons. Notwithstanding the State's legal requirements to have a comprehensive plan in order to implement their zoning and subdivision powers, communities are planning in order to take control of their future.

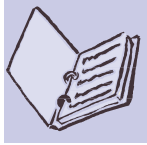


### **Zoning Ordinance:**

- Guides overall development
- Separates incompatible uses
- Describes standards for development

### **Subdivision Ordinance:**

- Regulates division of land into building lots
- Assures that lots are adequate in size and shape
- Provides efficient method for selling lots
- Ensures placement of public facilities



## HOW A PLANNING COMMISSION OPERATES

### Planning Commission Roles

Generally, the planning commission has three basic roles:

- Role #1. *Advisory***
- Role #2. *Regulatory***
- Role #3. *Procedural***

#### *Advisory Role*

The commission is the “keeper of the plan.” The “plan” refers to the local comprehensive plan and implementation ordinances. The commission is responsible for assisting with the preparation, review, and approval of the comprehensive plan and ordinances. They work with the public, the governing body, and staff. They advise the governing body on planning matters related to the development and implementation of the comprehensive plan. They make recommendations on plan adoption, plan amendments, and rezones. They are a listener, counselor, gatherer of facts and information, and a facilitator.

#### *Regulatory Role*

The commission administers the local land use regulations such as the zoning and subdivision ordinances.

#### *Procedural Role*

The commission is charged with running a fair meeting, making fair decisions, and conducting itself properly.

### Key Planning Commission Responsibilities

#### *Know your community and its geography and character*

Your knowledge as a resident of the city or borough is invaluable to the commission. If you are not as familiar with your community as you might be, do yourself and the commission a favor: after reading this handbook, go out and take a tour of your community.

Look at the landscape and take note of the lot sizes, the ages, and the architecture of the homes. Note where the major and minor transportation routes are and where major utility rights-of-way are located. Where are the public buildings, parks, and schools located? Where are the major business areas and traffic flows? Where are the major industries?

Learn about the community’s natural features: its streams, waterbodies, drainage channels, wetlands, steep slopes, avalanche and mass wasting exposures, different soils types, prevailing and seasonal winds, snow drift patterns, and other matters that would affect development decisions. Discover what is happening with the natural environment. Are there areas prone to



### How a Planning

### Commission Operates

- Planning Commission Roles
- Key Planning Commission Responsibilities

### Relationship Between Staff, Governing Body, and the Planning Commission

- Elected Body and Commission Relationship

### Public Participation and Working with Citizens

- Public Involvement Techniques
- Elements of a Successful Public Meeting or Hearing



“Effective staff/commission relations are vital to the overall success of planning in your community, whether your planning agency has one, ten, or one hundred employees. Good will and an understanding of the pitfalls that impede sound relationships can help you solve any problems that may arise.”

- Planning Commissioners  
Journal, No. 3, March/April  
1992, Elaine Cogan

flooding or erosion? Is a wetland or wildlife habitat being threatened? Are there old landfills leaching pollutants into the waterbodies?

Take note of what is located where and what is occurring. Is the community growing? Are businesses moving or finding it difficult to survive? Is traffic becoming more of a problem? If so, where and why? Is the average age of the population increasing or decreasing?

Get a firm grasp on your community and on the factors affecting its prosperity, quality of life, and local economy. In many rural communities, land use planning that supports a subsistence way of life is as important as planning decisions that promote a cash-based economy.

Use the State of Alaska DCED web page and community profiles for current and well-presented information about your community.

### *Know your local regulations and all required procedures*

Preparation is key to being an effective planning commissioner and it starts with knowledge. Commission members must have knowledge of the comprehensive plan and municipal land use codes (e.g. zoning and subdivision) at a minimum. Review the comprehensive plan and look for the general intent and for the way in which the various provisions interrelate. Ask yourself why certain uses are grouped

with certain others. Look for patterns. Review the zoning and subdivision codes – their intent, definitions, applicability, and review procedures. Become familiar with the other plans and codes used in your community, such as the coastal management plan, capital improvement plans, housing plans, State DOT/PF highway plans, the statewide transportation improvement plan, recreation and trails plans, flood mitigation plans, and where applicable, building and safety codes.

### *Know your partners*

There are many partners in the planning process. They include the governing body (borough or municipal assembly or city council), planning commission, board of adjustment, state legislature, courts, and planning staff. Look for opportunities to meet your governing body members, planning director, and staff. Find out what their concerns are. Ask about the history of planning issues. Learn what has been tried, what has worked and has not worked, and why. Get to know the “movers and shakers” and their positions. Your knowledge regarding community concerns will assist you when you are faced with difficult decisions.

### *Know the meeting agenda*

In addition, an effective commissioner comes prepared for the meeting. This means that, in advance of the meeting, you review the commission agenda, set aside time for thinking about the topics, review

the facts, and if necessary, meet with the planning director to discuss the meeting and any questions you might have about the agenda.

## RELATIONSHIP BETWEEN STAFF, GOVERNING BODY, AND THE PLANNING COMMISSION

### Staff and Commission Relationship

The planning staff plays a vital role in the planning process and the effectiveness of the planning commission. Staff carry out the tasks associated with administering the land use regulations. They also perform necessary research, prepare plans and reports, and distribute and explain the results of their work.

Professional planning staff have been trained to perform research; write reports; make public presentations and meet with the public; interpret plans, municipal ordinances, and other laws and carry out the routine tasks of their job. They do this using their training in geography, landscape design, urban and rural planning, economics, law, statistics, knowledge of the community, and other education and experience. In some communities the staff will have dual roles as the engineer, the manager/administrator, or the clerk.

Staff and its work may have the following effect on the planning commission and can be described using the following examples: The commission should consider how well the planning program is providing needed services in the community. Many communities do not have a full-time or even part-time planner on staff. Typically, another local government employee may serve as the planner. If services are not being adequately provided, the commission needs to support the hiring of either a full-time or part-time planner. This can be achieved through the municipal budgeting process (see the section on the Municipal Budget in Chapter Six).

### Elected Body and Commission Relationship

As a planning commission, are too many of your recommendations or decisions are overturned by the elected officials? Or, as an elected official, do you wonder what direction the planning commission will take next? The following ideas may improve working relationships between the planning commission and elected officials.



### Planning Staff:

- ✓ Administers the land use regulations
- ✓ Prepares staff reports and notices for meetings
- ✓ Researches planning, land use, and development issues
- ✓ Advises and assists the planning commission
- ✓ Educates and assists the public
- ✓ Knows and interprets laws and ordinances
- ✓ Conducts community and capital project planning
- ✓ Negotiates, facilitates, and coordinate between agencies, developers, and the public
- ✓ Enforces municipal code and conditions of approval stipulated by the commission
- ✓ Provides continuity – policy, documents, and people





## Top ten ways the planning commission can improve its relationship with the elected body:

1. Understand the responsibilities and authority of the planning commission and elected body.
2. Make sound decisions with adequate findings to insure that the reasons for your actions are clear to the elected officials.
3. Attend the governing body's meeting when an appeal of one of your decisions is being considered.
4. Ask for clarification of the governing body's policies or actions that are unclear.
5. Include in planning commission minutes any questions or points of view

that are not obvious in your decisions and findings.

6. Request an annual joint work session to discuss priorities, communications, etc.
7. Recognize the elected officials' responsibilities to voters. Be acquainted with the political platforms of the members of the governing body.
8. Enlist the help of the media. Use "op-ed" or opinion pieces to clarify commission opinions.
9. Do not rely solely on staff to convey your message – either to the public or to appropriate elected officials.
10. Do an annual self-evaluation and follow through with any needed changes in how the commission does business.

Staff Role	Effect on the Planning Commission (PC)
Explains land use plan, zoning and subdivision requirements at the "counter."	Staff's explanation and attitude affect the tone and content of testimony at the PC meeting.
Accepts or rejects applications.	Staff's assurance that applications are complete saves time and confusion at the PC meetings.
Prepares staff reports.	Staff's identification of issues, data, and criteria assists the PC with decisions and citizens with testimony.
Prepares public notices.	Staff's notice minimizes legal challenges to PC decisions and reduces "no one notified me" claims at public hearings.
Stays current on regulations, court cases, rulings, etc.	Staff's knowledge prevents PC errors from lack of current information.



## Commission vs. Staff

### *Commission Expectations of Staff*

- ❑ Be well organized and anticipate the type of information the commission will need.
- ❑ Respond to request for information in a timely and professional manner.
- ❑ Prepare accurate, well-researched, documented, and well-written staff reports including basis for recommendations (legal findings of fact).
- ❑ Provide exhibits, illustrations, and/or pictures to help commissioners and the public visualize the proposal.
- ❑ Help orient new commissioners.
- ❑ Be accessible to all commissioners.
- ❑ Keep all commissioners equally informed.
- ❑ Implement the commission's decision.
- ❑ Act in a fair, ethical, and consistent manner.
- ❑ Make professional verbal presentations at commission meetings.

### *Staff Expectations of the Commission*

- ❑ Prepare for meetings by reading all reports.
- ❑ Call staff with your questions before the meeting.
- ❑ Examine all the facts on a given issue and make the best decision possible.
- ❑ State your reasons for your decision (legal findings of fact).
- ❑ Do not ridicule or make light of the staff in public.
- ❑ Do not assume the staff is wrong and the citizen is right.
- ❑ Compliment the staff when and where appropriate.
- ❑ Trust and respect staff.
- ❑ Remember that the planners' first responsibility is to the city or borough administration.
- ❑ Explain your reasoning if the commission disagrees with staff recommendation.
- ❑ Act in a fair, ethical, and consistent manner.

The above tips were taken from the *Planning Commissioners Journal*, November 24, 1996.

## PUBLIC PARTICIPATION AND WORKING WITH CITIZENS

Public participation takes a great deal of planning, hard work, and resources. The

planning commission is one of many forums where the public has a chance to learn about the community, find out about proposed projects, and participate in the decision-making process.

Major reasons to incorporate meaningful



“Many new commissioners feel they have been appointed to the commission to represent a political view or to advocate an agenda. Decisions that take place on the planning commission level are always best made when the commission works towards a common goal of trying to shape the best possible solution for all those involved. All commissioners will need to rely on the other commissioners to help handle dicey decisions and there is no place for adversarial positions on a planning commission.”

- Dwayne Adams,  
MOA Planning Commissioner



### Attributes of an Effective Planning Commissioner

- ✓ Patient
- ✓ Self-confident
- ✓ Willing
- ✓ Good listener
- ✓ Enthusiastic
- ✓ Objective
- ✓ Courageous
- ✓ Sense of humor
- ✓ Public spirited

“Listen or your tongue will make you deaf.”

- Native American Proverb

and broad-based public participation as part of the local planning program include:

- Improving the general trust in government
- Tapping local knowledge and talents
- Creating a sense of ownership in the plan and governing regulations
- Creating a constituency for planning
- Ensuring the plan remains intact over time
- Increasing the quality of the plan
- Improving enforcement of land use laws
- Streamlining the development and planning process

Involving the public gives the commission an opportunity to educate, build support, and encourage ownership of a project.

### Public Involvement Techniques

There are a number of public involvement techniques a community can use that have proved successful. These can work well to keep the community informed about plans and actions. Techniques include:

- Visioning and focus groups
- Public meetings
- Open houses (information sharing/gathering)
- Facilitated discussions (issue identification, scoping, present alternatives)
- Joint meetings with community councils, city councils or assembly, and local corporations

- Newsletters
- Media – interviews, talk shows, public service announcements
- Surveys

### Elements of a Successful Public Meeting or Hearing

Consider the following checklist when planning the next public meeting or hearing:

#### Purpose

There should be a good reason to meet. The purpose may be to gather information (and listen and learn) about a project. The purpose may be to perform an official function, make a decision (facilitate).

#### Notice

People need to know they should attend, why they should, and when and where the hearing or meeting will be held.

#### Preparation

For a successful meeting, an agenda must be prepared and published, people need to be notified, arrangements must be made for a proper meeting place and time, and reports and visual aids prepared.

#### Agenda

Public meetings and hearings need clear and fair rules about the procedure to be followed. An agenda available for public review prior to the meeting is essential. By sticking to the agenda, the commission can run an efficient hearing.

### *Participants*

Make sure the necessary people are invited to attend the meeting.

### *Place*

The site for the meeting needs to be convenient for the participants and of a type and size appropriate for the meeting.

### *Results*

Time should be taken at the conclusion of the meeting to reflect on the meeting and what was accomplished.

### *The Record*

A record of the meeting must be kept. A list of the time, the place, participants, and results may be adequate for an informal meeting. For public hearings, minutes must be taken and filed with the local government. In some communities, the meetings are tape-recorded and the tapes filed for future reference.







## PLANNING COMMISSION MEETINGS

### Types of Planning Commission Meetings

The commission may use several different types of meetings in order to conduct its business. These include regular meetings, special meetings, and worksessions.

#### *Regular Meetings*

Regular meetings are the decision-making meetings and often are public hearings. The regular meeting date is often established in the ordinance governing the commission. Some ordinances allow the commission to determine when it will hold regular meetings by scheduling its regular meeting dates for the upcoming year by resolution. A commission should not rely on such resolutions as a substitute for the notice of meetings required by the Open Meetings Act without consulting first with the municipal attorney.

#### *Special Meetings*

Special meetings may be held under the conditions prescribed in the ordinance governing the commission. A common provision permits the commission chair or three members to call a special meeting. Reasonable public notice of the special meeting must be given. Often, the governing ordinance will limit the matters that may be acted on at a special meeting to those contained in the public notice. Some provide

an exception to this limitation if a supermajority approves an additional matter.

#### *Work Sessions*

Work sessions are valuable formats as they are much less formal than commission meetings and permit commission members to receive information and discuss matters in a relaxed manner. They are often used for initially dealing with more complex or lengthy matters. However, work sessions are viewed as something other than a commission meeting; the commission is not allowed to make motions or otherwise take action to resolve a question or make a decision.

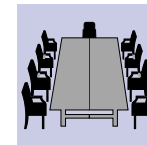
### The Planning Commission Meeting

#### *Be Prepared*

Each member should receive a copy of the meeting agenda, background reports, studies, and maps in advance of the scheduled meeting date. Commissioners should contact staff if they have any questions about the contents of the packet. If appropriate, and legal in your community, a site visit is helpful, especially for more controversial projects (see the section on ex parte contact in Chapter Four).

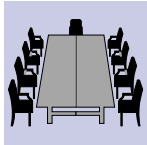
#### *Explain the meeting procedures at the beginning of the meeting*

Rules of procedure will make the meeting work more efficiently and effectively AND will make the job of the commissioner



### Planning Commission Meetings

- Types of Planning Commission Meetings
- The Planning Commission Meeting
- Running a Meeting
- Parliamentary Procedure
- Sources of Information for Decision-Making
- Findings
- The Record



more enjoyable. The rules outline how the commission handles its business and include things like limits for speakers, managing the agenda, and procedures for deferring business. Testimony will be more relevant when people understand the basis for the decision. This information should be in the planning commission by-laws.

#### *Be on time and start on time*

If the meeting is scheduled for 7 p.m., the meeting should start at 7 p.m. If you have to wait for one or two others to have a quorum, you are being unfair to all the people who came on time.

#### *Show respect for the Chair*

Say Madam Chair, Mr. Chair, Chairman Brown, etc. This sets an example of orderliness.

#### *Treat people equally; don't use first names*

If the first person to testify is referred to as Mr. Jones, refer to the next person as Mrs. Smith even if she's Susie, your sister-in-law.

#### *Summarize what you have heard*

Comment on which facts are important to the decision and which facts are not.

Before the meeting is adjourned, the commission should determine if any action taken requires further attention before the next scheduled commission meeting. Debriefing occasionally also helps commissions become more effective. Discuss whether or not the meetings are

running well, if the procedures work, and if there are any changes needed.

#### *Set the Agenda*

Have an agenda (sample below) that describes what will happen at the commission meeting.

The meeting agenda might look like this:

- 
- I. Call to Order
    - A. Roll Call
    - B. Approval of Agenda
    - C. Consent Agenda
  - II. Approval of Minutes
  - III. Public Hearing Items
  - IV. Old Business
  - V. New Business
  - VI. Committee Reports
  - VII. Items not Scheduled for Public Hearing
  - VIII. Commissioner Comments
  - IX. Adjournment
- 

Sticking to the agenda is basic to having a productive meeting. An agenda also provides structure and order for commission deliberations.

If possible, the agenda should be made available for public review a week before the meeting, but no fewer than three days, so the public has ample opportunity to review it. Some municipal attorneys believe that the agenda must be published in the notice of the meeting and that matters not on the published agenda may not be



acted on by the commission. You should confirm whether or not you could take action on items not on the agenda. You should make sure that your municipal attorney has approved your notice format and content.

### *Provide Adequate Meeting Notice*

Adequate public notice of items that will be before the commission for its consideration is essential. This is not just because of legal requirements, but because it is simply good business keeping the public informed about matters before the commission. The public is in the position of providing supplementary information to the commission through public testimony.

The State of Alaska Open Meetings Act (AS 44.62.310) requires that all meetings of a public body such as a planning commission, be open to the public. More explicit information regarding the length of notice, where to publish or post the notice, and the kinds of information that should be contained in the notice should be in the your municipality's ordinance establishing the planning commission or in another chapter of the municipal code dealing with public notice.

Notice requirements can include the following options. Use one or more that fits your community and your local ordinance requirements:

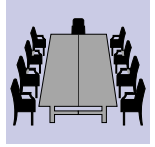
### **Public Notice**

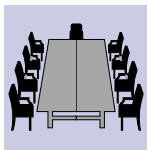
1. A notice in a paper of general circulation at least seven days in advance of the meeting which includes the matters to be considered, the time, and place of the meeting, and the place where documents relating to the matters may be reviewed.
2. A notice mailed to property owners who live within several hundred feet of a site that may be affected by a land-use action (i.e., subdivision, rezone, or variance).
3. Notices posted at conspicuous locations in the community such as the post office, store, health clinic, and city hall.
4. A notice posted at or near the site where a land-use action is proposed to take place.
5. If the community is served by radio, a notice may be broadcast as public service announcements (PSA). However, the PSA should not be relied upon for official notice as the station has no obligation to the municipality to make the announcements.

### *Provide Adequate Meeting Space*

It is important to hold meetings in a room that is large and comfortable enough to use for the commission and the public. A stuffy, poorly lit or unventilated room or a room in which it is difficult to hear people talk, creates poor working conditions that could hinder the satisfactory conduct of

- ☐ The commission should work together as a team
- ☐ Everyone is important to the smooth functioning of the commission





#### How does the commission make decisions?

- ✓ Using common sense
- ✓ Thinking about what is in the best interest of the larger community
- ✓ Considering the rules
- ✓ Using persuasion or arguments based on testimony
- ✓ Interpreting the comprehensive plan in accordance with legal requirements

business, particularly if a large crowd is present. Decisions can be easier to make if the meeting room is large enough, well lit, and comfortable to work in.

Select a meeting place that can be used regularly so the public will know, month-to-month, where the commission will be meeting. Make exceptions only when a large crowd is expected and more meeting space is needed. There should be adequate heating and ventilation and nearby rest rooms.

#### Running a Meeting

##### *Role of the Chair*

The attitude and abilities of the chair are critical to the successful operation of the planning commission. A capable chair understands the issues, understands his or her fellow members, can maintain order, and is able to bring the commission to a decision even on complicated or controversial issues. A person should be named as chair for his or her leadership abilities in addition to having other qualities such as integrity and fairness.

The chair is somewhat "removed" from the meeting in that he or she may not participate as fully in the meeting as the other members. Since it is the chair's job to preside over the meeting in a neutral manner, he or she does not normally become involved in the commission's deliberations, except to lead the group toward making a decision.

##### *Responsibilities of the Chair*

The chair has two types of responsibilities: those contained in the commission's rules of procedure and those that are more related to his or her leadership abilities.

Responsibilities of the chair include:

**Running the meeting.** It is the chair's responsibility to run an orderly meeting and conduct the commission's business in a fair and timely manner. Other commissioners, the staff, and the public will look to the chair for leadership.

**Maintaining order.** Do not allow members of the public to clap, cheer, whistle, and so on either for or against testimony that is being presented or in response to comments by commission members during their deliberations. The chair should "gavel down" this kind of behavior and run an orderly meeting. Neither should the chair permit members of the commission to accuse or overtly challenge one another, members of the public, or persons testifying.

**Keeping business moving.** The commission should not endlessly mull over matters, continually request new information, and otherwise delay making a decision when the information needed for doing so has been presented. The chair should move the meeting along by summarizing the facts and the positions presented by commission members and bringing matters to a vote. Failure to do so is unfair to the governing body, which may be relying on

the commission's recommendation, and to the applicant, whose proposal may be unfairly delayed by indecision.

**Managing public testimony.** Testimony from witnesses should be held to a reasonable length of time, particularly if a large number of people want to address the commission. Testimony should pertain to the matter under deliberation. The chair should discourage successive witnesses from repeating the same testimony over and over again. The commission also needs to show that it is interested in what the witnesses have to say.

**Preventing arguments.** The chair should prevent sharp exchanges from occurring between commission members and persons testifying and between commission members themselves. He or she should limit the dialogue between commission members and persons testifying to fact gathering that will contribute to the commission's decision-making ability. This is important to prevent a loss of the commission's objectivity and credibility.

**Understanding parliamentary procedure.** Since either Robert's or Mason's Rules will usually be used, this is crucial to the chair's ability to run an orderly meeting. He or she must be familiar with parliamentary procedure. The chair must understand motions and amendments to motions, the order in which business is conducted, topics that are and are not debatable, and so on. Someone other than the chair may act as

the parliamentarian, but the chair should know the rules to conduct the meeting.

**Tying things together.** This is the ability to take into account public testimony, commission deliberations, and the issue at hand, in guiding the commission toward a decision. It is based on the chair's ability to discern a position that a majority of the commission can support and that is fair to the public.

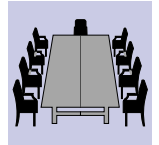
### *Qualities of a Good Chair*

The ability of the chair to run a meeting is important if the commission is to get its work done. Commission members will expect the chair to display leadership skills and to run well-organized and purposeful meetings. A good chair will be:

**Tactful.** The chair must show tact with other members and the public. A rude or insulting chair will reflect poorly on the whole commission and will alienate other commissioners and members of the community.

**Decisive.** The chair may have to think and act quickly in overseeing the conduct of the commission's business. This may include summarizing positions, clarifying motions, and giving direction to staff based on the differing views of commission members.

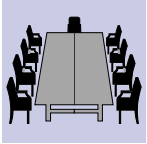
**Respectable.** A chair, whose judgment has been tested and found to be good, whose opinion is sought out, or who has support



“The very first thing a new commissioner needs know is about the meeting routine. They need to know how votes are cast and recorded and they need to know about the unwritten rules that the old hands usually observe.”

- Faye Palin,

MSB Planning Commissioner



“Leadership is practiced not so much in words as in attitude and in actions.”

- Harold S. Geneen

from diverse elements of the community has earned the respect of his or her peers. This can only help in conducting the commission's business and enhancing its role in the community decision-making.

**Articulate.** As the spokesperson, the chair must be able to articulate the commission's position to the city council, the public, and the media. This includes the ability to explain complex or controversial matters, which may be either poorly understood or disputed in the community.



**Knowledgeable about the Issues.** Of all members, the chair must be able to understand the business before the commission. Failure to understand an item which the commission is to act on can lead to confusion and result in poor decision-making. The chair needs to put in extra effort studying the agenda and preparing for the meeting.

### Parliamentary Procedure

The ordinance establishing your commission may prescribe the parliamentary rules you are to follow and may give the commission authority to modify those rules. If none are prescribed by ordinance, then the commission must adopt formal rules of procedure such as Robert's Rules of Order or Mason's Rules. These rules are virtually the same, except that Mason's Rules is adapted more for legislative bodies than Robert's. Also, it is much more difficult to find copies of Mason's. Robert's and Mason's may seem complicated, but it is a good idea to learn the basics of whichever parliamentary procedures your commission uses. This will make you a better commission member and will contribute to the skills that characterize a good commission.

### Quorum

Title 29 (AS 29.40.020(a)) states that the commission is made up of five members unless the local governing body establishes a greater number by ordinance. Commissions in larger municipalities usually have seven to nine members.

A quorum is the minimum number of commission members needed to conduct business. A quorum is always a majority of the total membership. A quorum is also the minimum number of members needed to convene a meeting of the commission. Typically, it is also the minimum number of votes needed to adopt a motion.

When only a quorum is present, any one member can prevent matters before the commission from being adopted. This system can be unfair to applicants for permits that must be approved by the commission because the applicant must obtain the same number of approving votes whether a mere quorum is present or the full membership is in attendance. When a mere quorum is present, the applicant must obtain unanimous consent while a majority is all that is needed if the full membership is in attendance. Therefore, it is important to have planning commission members who are committed to attending meetings.

Some municipalities require only a majority of those present to take action on a matter, and some provide for alternate members who may participate when one or more regular members are absent or have a conflict of interest. It is not a good policy for a commission to act on controversial, complicated, or difficult issues when several members are absent, even though a quorum is present.

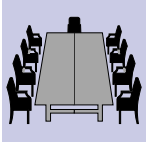
### *Motions*

All formal actions (voting) taken by the commission are initiated by motion. For example, a commissioner might say, "I move that the commission approve the rezone of Tract B from low density to medium density residential." Stating a motion places a matter before the commission for its consideration and permits debate to take place. Amendments to the main motion are always voted on before voting on the main motion itself. During discussion on the motion, members give their reasons for supporting or not supporting the motion as stated.

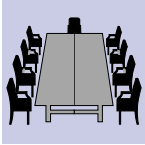
It can be important for commission members to give their reasons for voting 'yes' or 'no' on a motion. The reasons given for or against a given matter are needed to support the commission's position and form part of the findings that will be reviewed if a decision is appealed.

### *Formal Acts of the Commission*

Acts of the commission, such as granting a variance or conditional use permit or approving a plat, are considered to be formal acts of the commission. Most ordinances governing planning commissions require a resolution for formal acts of the commission. The resolution describes the action taken, its effective date, its expiration date, conditions on approval, and other information that fully describes the action taken. The resolution is usually the document that contains the findings of the commission and its rationale for the decision.







“A commissioner’s key responsibility is to make decisions based on the facts that are presented and the narrowness of the criteria for the decision at hand. A commissioner must remove from consideration those issues that are not germane to the case. It is very easy to get distracted by issues raised by the public that are emotional in nature and not applicable to the case’s merits.”

- Dwayne Adams,  
MOA Planning Commissioner

The important thing to remember is that a written record is needed to document the commission's formal acts and that findings must be made in quasi-judicial proceedings such as actions on plats, conditional use permits, and variances.

#### *Testimony at Meetings*

Testimony at meetings may be the most familiar form of public participation in the planning commission's decisions. With adequate notice and an opportunity to review the agenda before a meeting, citizens can appear before the commission and present their viewpoint. Testimony at meetings is sometimes associated with crowded meeting halls, angry residents, and commissioners seeking ways to "dodge a bullet." Meetings may, in fact, bring out polarized opinion or cover items that are controversial in the community. The commission may also hear many good ideas that can assist it in making sensible, fair decisions.

#### **Sources of Information for Decision-Making**

##### *Ad Hoc Citizen Committees*

Ad hoc committees are temporary committees appointed to investigate specific issues or problems and make recommendations to the city council and/or commission. Committees may also be formed to hear testimony and offer recommendations on major community undertakings such as a comprehensive

plan. Ad hoc committees should be composed of people with some interest or expertise in the issue under study. It is a good idea when ad hoc committees are formed to have at least one member of the commission appointed to the committee. This will keep open lines of communication between the two groups and keep the commission informed about the ad hoc committee's progress and problems. Ad hoc committees are disbanded when their work is completed.

##### **Organized Groups**

Service clubs, neighborhood associations, or civic groups may take an interest when particular issues that affect them are before the commission. These may be either permanent organizations, such as a local chamber of commerce, or more temporary groups that form because of a particular issue or concern. Typically, these groups will advocate for a specific interest or purpose. These groups are often good sources of factual and background information. They are often well-organized and prepared to provide thorough testimony.

##### **Public Opinion Surveys**

In addition to providing factual information on matters like demographics and household income, surveys can be useful indicators of community opinion on matters such as growth and economic development. They can help determine community-wide attitudes. Care should be exercised in preparing a survey to assure that the questions are clear and specific and do not



lead to pre-determined answers. This will assure that the information being solicited will be useful in making decisions about community goals.

No local planning program will succeed without public support. That support depends upon ongoing participation by citizens.

## Findings

### *What Are Findings?*

Findings are nothing more than a statement by the commission of the evidence and reasoning it used to arrive at a decision. They are the road map that shows the reasoning process that got the commission from the evidence presented during the public hearing to its final conclusion to grant or deny the applicant's request. Findings are important in helping the public understand why the commission reached the decision it did. Even if members of the public disagree with a commission decision, they may not become as upset or angry if they understand the reasoning that lead to a decision.

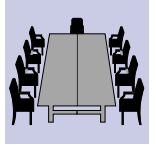
One of the most common reasons that courts overrule commission decisions is that the commission has failed to prepare findings. The lack of findings will result in a remand to the commission or, if justice requires, a de novo hearing by the court where the court orders a new hearing and assumes the role of the commission.

The court has made it clear that even if an ordinance does not require findings, they must nevertheless be made in quasi-judicial proceedings such as a variance proceeding. The court has also explained why findings are necessary, how they should be structured, and the benefit a commission will derive from going through the exercise of making findings.

Findings are the statements of the commission that show the reasons for its decision to grant or deny the entitlement or permit.

Findings set out the relevant facts found from the evidence presented; relate these facts to the conditions that must be proved or to the standards that must be met; state whether the relevant condition or standard is shown to have been met or not by the identified facts, and state whether all the necessary elements have been sufficiently shown. If there was no evidence given to prove one or more of the necessary elements, this lack of necessary evidence must be stated.

The findings would then go on to state whether the entitlement or permit is granted or denied. If special conditions or limitations are to be imposed on the permit, there should be findings that justify the additional limitations. If evidence is rejected because it is believed to be unreliable or unbelievable, then the commission should state that it did not rely on that evidence

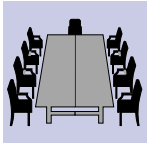


### Typical findings include:

- ✓ **description of request**
- ✓ **statement of facts**
- ✓ **reasons for approval or denial**
- ✓ **conditions of approval**

### Findings tell you:

- ✓ **who**
- ✓ **what**
- ✓ **when**
- ✓ **where**
- ✓ **why**



### The record should contain the following:

- ✓ The application
- ✓ Correspondence between the applicant and the staff
- ✓ The staff report and written comments submitted by neighbors and other members of the public
- ✓ Oral evidence given at the hearing
- ✓ Plats, plans, drawings, photographs, deeds, surveys, reports of consultants and experts
- ✓ Written testimony
- ✓ Records of mailed and published notice (if notice is an issue)
- ✓ Municipal records and other documents submitted during the proceeding

because it believed it to be unreliable or unbelievable, or that it found other evidence that was more reliable or believable.

If the proceeding was for the purpose of considering whether to revoke or deny a permit, findings must still be made even if the commission decides that the permit should not be revoked.

Although a resolution is typically used to describe the findings, there is no particular form required for the decision and findings.

### The Record

The record is the collection of all the evidence presented to the commission during the proceeding. This is the foundation upon which the commission's decision rests.

In an appeal of a commission's decision, the court is not going to step into the shoes of the commission and decide what decision the commission should have made if the commission made supportable findings that reasonably explain its decision. What the court will ask is whether there is substantial evidence in the record that supports the commission's findings. Substantial evidence is evidence a reasonable mind would accept as supporting the commission's conclusion. Even if the court believes that there is other evidence on the point that is stronger than the evidence relied upon by the commission, the court will defer to the commission's selection of the competing evidence so

long as a reasonable mind would accept such evidence.

The "reasonable mind" test gives broad, but not unlimited, latitude to the commission's selection from among competing evidence in the record. While the commission is not bound to determine which is the best and strongest evidence, it cannot invent evidence nor stretch evidence beyond recognition.

As stated by the Maryland Court of Appeals a long time ago, the commission has

... the duty of deciding in accordance with the evidence, and it is arbitrary and unlawful to make an essential finding without supporting evidence.

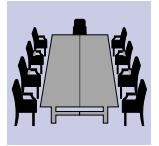
Heath et al. v. Mayor and City Council of Baltimore, 49 A.2d 799, 804 (Md. 1946)

## What Makes a Good Finding?

The best findings include the following five key elements:

1. An identification of the parties, property, and the requested. This will ensure that everyone has reached a decision on the same subject. It will "frame the issues."
2. A list of the witnesses, documents, and exhibits relied upon. Use only evidence that was introduced at the hearing. Personal knowledge may be used if that knowledge is commonly shared by others in the community. Knowledge that is not widely shared may be used so long as it is announced and the parties are given the opportunity to rebut it.
3. An identification of the standard established by the ordinance for the action requested by the applicant. The standard might be "undue hardship," "public safety," or "exceptional circumstances." By stating the standard, the commission acknowledges that it knows the standard, and it helps the commission focus on the standards that must be met.
4. An explanation, fact by fact, why the evidence does or does not establish that the standard has been met. Try not to leave out any facts. Even if the court disagrees with the commission's judgment, it is likely to uphold the decision if it feels that a hard look was taken at all the evidence.
5. If the request or relief is granted, a description of it and any conditions should be attached. This is invaluable for the parties and staff. Findings can be prepared after a decision is made and adopted at the next meeting. Almost any finding is better than no finding. If the commission does not announce the reasons for a decision, it will reflect poorly on the commission, and the decision could be jeopardized.

## How Do You Make Findings?

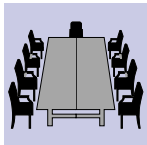


There are several methods of making findings. Three methods are commonly used in Alaska.

1. The commission to compose each of the findings through the commission's usual decision-making process. This can be an extremely time consuming method and often produces inadequately drafted, incomplete, ambiguous, or confusing language.
2. The commission discusses the evidence received and determines its decision along with a summary of findings that it believes support its decision. The matter is then referred back to staff with directions to draft detailed findings and a decision consistent with the commission's discussion and summary of findings. The staff draft is then returned to the commission for its final approval.

There are drawbacks to this method. It delays the final decision for two to five weeks, depending on how often the commission meets. This can be troublesome if the code requires the final decision be issued within a specified time from the close of the hearing. It also creates the risk that there will be difficulty getting commission approval of the draft final findings if all members who were present at the hearing are not present at the subsequent meeting when the draft is presented for approval. If members who were absent from the hearing are present at the subsequent meeting, a serious question arises as to whether such members who did not hear the evidence can vote to approve the draft final decision.

The great advantage to this method is that it provides the best opportunity for the commission to approve well-written findings. It also gives staff a chance to consult with the municipal attorney if there appear to be problems with the commission summary of findings and decision.



“One of the most important things that you do is make “findings of fact”. It is important to clearly elucidate the reasons for your decision. The facts should be clearly tied to city codes, comprehensive plans, and standards by which the merits of the case should be judged. Subjective statements can only be loved by attorneys.”

- Dwayne Adams,  
MOA Planning Commissioner

An alternative to commission approval of the staff draft is to delegate to the member who presided at the hearing the authority to review and approve the staff draft.

3. For staff to include proposed findings and decision with its report on the application. This method has drawbacks, too. The staff recommended findings would be based solely on what staff has learned from its review and investigation of the application; it will contain no consideration of evidence that is presented at the hearing. Further, if the commission disagrees with the staff recommendation, then the commission is

left to attempt to compose its own findings with the likely result being incomplete, confusing, or ambiguous findings and decision. To avoid the risk of having staff recommended findings and decision that differ from what the commission wants, some planning staffs will provide two sets of proposed findings and decision: one supporting approval of the application and one supporting denial. This may set the stage for a successful appeal by a disappointed applicant or other party to the proceeding as it suggests that there is some arbitrariness in the decision finally made by the commission.

### Rules of Appeal

A party who is disappointed in a quasi-judicial decision of a commission may appeal that decision to the Superior Court within 30 days of the issuance of the final decision if the land use regulations do not provide for an appeal to some other municipal body. However, Rule 602(a)(2) of the Rules of Appellate Procedure provides that the 30 days does not begin until the commission issues a decision that "clearly states that it is a final decision and that the claimant has thirty days to appeal." If words to this effect are not included in the decision, a disappointed party may be able to file an appeal to the Superior Court long after

everyone thought the thirty days had expired.

Even if the land use regulations provide for an appeal to another municipal body (e.g., the city council, assembly or a special appeals board), it is a wise practice to include a statement in the decision that sets out the name of the municipal body to which the appeal may be taken, the municipal office where the appeal must be filed and the number of days a person has to file an appeal.



## DECISION-MAKING

### Types of Commission Decisions

Planning commission decisions can be either legislative or quasi-judicial (adjudicative) in nature. Substantive due process (**reasonableness** of decision) rules apply to legislative decision making while procedural due process (**fairness** of the process) rules apply to quasi-judicial proceedings.

#### *Legislative Decisions*

Legislative decisions are decisions that make or interpret policy. The decisions may be broad ranging, such as recommending the adoption of a comprehensive plan or recommending priorities for the capital improvements program, or very specific, such as recommending amendments to the platting code or advocating for a new staff member. The key element of legislative decisions is that they apply equally (or are meant to apply equally) to everyone in the community or to everyone in a class of persons, not just to a specific individual. Another element is that the legislative body has discretion to adopt or not adopt the legislative proposal. A law that sets speed limits is legislative because it applies to and affects all those persons who drive and the legislative body has discretion as to which limit to adopt or whether to adopt any speed limit at all. In Alaska, a rezone is legislative. It affects all those with property in the area that is rezoned and the

legislative body has the discretion to approve or deny the rezoning.

Although there may be statutory rules that govern legislative proceedings, there are no procedural due process rules that apply to legislative proceedings. Courts are hesitant to invade the procedural realm of the legislative branch government. However, if a rezone was clearly contrary to the comprehensive plan, a court could easily find such an act to be arbitrary and capricious, no matter how many hearings were held or how many persons supported the rezone.

#### *Quasi-Judicial Decisions*

Generally, quasi-judicial proceedings involve decisions that have a direct effect on the rights and liabilities of a single person or, occasionally, a small group of identified persons. Quasi-judicial proceedings deal with matters in which a determination will be made on whether a person has shown that they have met all the established requirements that give them a right to a permit or other entitlement. The commission must determine whether, from all the evidence presented, the required standards have been met.

Variances and certain types of permits are examples of entitlements that must be granted if the applicant is able to show that their request or proposal meets all the required standards. Quasi-judicial proceedings also occur when the commission sits as a Board of Adjustment

### Decision-Making



- Types of Planning Commission Decisions
- Legislative Decisions
- Quasi-Judicial Decisions
- Due Process
- *Ex Parte* Contacts
- Conflict of Interest
- Open Meetings Act





“The very first thing a new commissioner needs know is about the meeting routine. They need to know how votes are cast and recorded and they need to know about the unwritten rules that the old hands usually observe.”

- Faye Palin,  
MSB Planning Commissioner

to hear appeals from the decisions of administrative officials, such as the building official or planning director. A proceeding to determine whether a previously granted permit should be revoked is also a quasi-judicial proceeding to which the full array of procedural due process rules apply. Platting approval is also a quasi-judicial proceeding.

### Due Process

“No person shall...be deprived of life, liberty or property without due process of law;...”

- Fifth Amendment to the U.S.  
Constitution

These words in the U.S. Constitution and similar words in the Alaska Constitution give rise to a number of rules applicable to the decision-making process of most planning commission proceedings. These are rules that the courts have found necessary to ensure that a person whose rights are at stake in a governmental proceeding receives the process that is due them. See Due Process rules at right.

### Ex Parte Contacts

Direct communication between a citizen and a commissioner is common for planning commissioners because of their visibility in

the community and the nature of their work. Discussions with commission members outside the public forum can be a beneficial way to exchange information and help keep commissioners informed of residents' attitudes. However, a distinction must be drawn between contact on general or legislative matters and contact on quasi-judicial matters that are currently before the commission or scheduled to come before the commission. While such contact may be permissible in a proceeding on a legislative matter (where the contact is known as lobbying), it is impermissible in quasi-judicial proceedings.

### What Does Ex Parte Mean?

*Ex parte* is a Latin term that means, "from or on one side only." It is the label for private communications between an interested party in a quasi-judicial proceeding (i.e., variance, conditional use permit, or subdivision approval) and a member of the body that is hearing the matter. One or more members of the commission will have received evidence that may influence their vote, but the other parties to the proceeding will be unaware of this evidence and will not have an opportunity to rebut it or to take it into account in presenting their arguments. This is a problem. Just as it would be unfair to let only one side of a proposal to present evidence at a hearing, it is also unfair to permit any side to present evidence to the decision makers in private. The essential feature of an *ex parte* contact is that someone with an interest in a quasi-judicial



## Procedural Due Process

- ✓ fair hearing
- ✓ notice
- ✓ accurate record
- ✓ impartial



### The Due Process Rules

Key to the decision-making process is the principle of due process. The due process clause is the most important, pervasive, and frequently encountered constitutional principle. The fundamental concept underlying due process law was embodied in the Magna Carta in 1215. The framers of the U.S. Constitution incorporated this important phrase in the Fifth Amendment as a limitation on the power of the federal government. The ratification of the Fourteenth Amendment after the Civil War took the phrase “due process of law” and used it to limit the actions of state government.

The principle of due process contains two basic components:

#### Procedural Due Process

This requires that before any person is deprived of life, liberty, or property, he must be given a fair hearing or an opportunity to be heard and defend against proposed action to be taken against him.

What does this mean in the context of planning? Provide adequate public notice. The notice must be sufficient enough to make all interested persons aware of the matter, where additional information may be obtained, and when and where to participate. The notice should be well in advance of the hearing or meeting.

There must be a fair hearing before an impartial tribunal (i.e., the planning commission). Interested persons must be given a reasonable opportunity to present their case. This means an orderly, well-run hearing at a reasonable time and at a reasonable location.

Keep a record of the public process. This means that all information/evidence used in the decision and the actual decision made (staff reports, minutes, testimony, and resolutions) must all be kept as part of the “record”.

#### Substantive Due Process

This requires that no person may be deprived of life, liberty, or property under circumstances that are unreasonable, arbitrary or capricious. This constitutes a major limitation on the police power of the states and is relevant to the concept of “takings”.

What does substantive due process mean in the context of planning? Once again, it is about fairness and ensuring that the commission’s decision is not arbitrary or capricious, and that all decisions are based on the facts in the case.

Remember, the recurring principal that supports the procedural due process rule is **fairness**. The recurring principal that supports the substantive due process rule is **reasonableness**. The lack of required due process in a commission proceeding forms the basis for the reversal of a commission decision. It is more important to be fair than “right”.



decision before the commission – an applicant, a representative of an applicant or an opponent of the application – is attempting to influence a vote outside the public forum. Unless corrected, *ex parte* communications can result in a violation of procedural due process.

### *What To Do When It Occurs*

*Ex parte* contact can occur in a number of ways, and many are quite innocent and unintentional. Telephone calls, informal meetings, lunches, or even a casual encounter on a street corner all present opportunities for citizens to express facts or an opinion about a quasi-judicial matter to a commissioner. As soon as a commissioner senses that he or she are about to be involved in an *ex parte* contact, he or she should stop the citizen and explain that commissioners are not permitted to hear anything about the matter except at the hearing. The commissioner should recommend that the citizen submit their comments in writing to the commission or appear and testify on the record along with the other citizens who are concerned about the matter.

If discussion of the matter comes up among members of an association at a meeting of the association the commissioner is attending, the commissioner should attempt to have the discussion put on hold until the commissioner can leave the room.

Site visits, whether by an individual commissioner, a commission subcommittee,

or the entire commission must be handled carefully, particularly if the applicant or an opponent is present and attempts to point out particular features of the site or provide other information relevant to the application. If you have any questions regarding making a site visit, consult your municipal attorney to determine if there will be a problem with the quasi-judicial proceeding before the commission. And, don't forget that a site visit by the commission, a commission subcommittee, or the lesser of a quorum or 4 members is subject to the Open Meetings Act. Adequate public notice of such a site visit must be given and the public must be able to attend and observe the visit.

### *Correcting Ex Parte Contacts*

If you have been involved in an *ex parte* contact under any circumstance, you may be able to overcome the fairness problem by disclosing the contact and the substance of what was related to you at the beginning of the hearing. This will get the evidence you received on the record and out in front of the interested persons. Then, you should state whether you believe that the contact has swayed your view of the matter and whether you can give an unbiased view to all the evidence presented.

### *Conflict of Interest*

As public officials, commissioners have a duty to make decisions in the best interest of the public without the influence of personal interests. When a commissioner has a financial interest in a matter before

the commission, that commissioner has a conflict of interest and usually may not participate in the decision on the matter.

### *What Constitutes a Conflict of Interest in Alaska?*

AS 29.20.010(a)(4) requires that each municipality (including home rule) adopt a conflict of interest ordinance which provides that:

(4) a municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.

However, the law does not provide us with a definition of what "substantial financial interest" means nor does it tell us what procedure to follow to determine whether a substantial financial interest exists. Because these essential details are missing in the statute, each municipality should address them in the ordinance that the statute requires it to adopt. While other subsections of this statute set out a procedure that could allow a governing body member to participate in a decision in which the member has a substantial financial interest, these subsections do not apply to any other municipal body, such as a planning commission. The subsection that applies to planning commissions (and platting boards) quoted above, is absolute: if a member has a substantial financial

interest in a matter, that commissioner is prohibited from participating in official action on that matter.

### *What Constitutes a Substantial Financial Interest?*

How much interest must there be to constitute a substantial financial interest? You must review the conflict of interest ordinance your municipality has adopted because an interest that rises to a substantial financial interest in one municipality may be defined as not substantial by another municipality. For example, one municipality might define a substantial financial interest as the ownership of any amount of stock in a corporation. Another municipality might define it as ownership of more than one tenth of one per cent of all the outstanding shares of a corporation. In the first example, one share of AT&T would be sufficient to prohibit a commissioner from participating in a commission matter involving an application by AT&T for a tower permit. In the second example, a commissioner who owns 200 shares of AT&T would not have a substantial financial interest in AT&T.

Another factor that should be addressed in the conflict of interest ordinance is the effect of financial interests held by certain persons who are related to the public official. For example, the financial interests of a spouse are almost always viewed as being held by the public official for conflict of interest purposes. The interests of dependent children and parents is also





often included. Some ordinances include the interests of independent children, grandchildren, parents, grandparents, brothers, sisters, aunts, uncles, cousins, and other more distant blood relatives. Your conflict of interest ordinance should tell you which of your relatives' financial interests would be deemed to be yours for conflict of interest purposes.

### *What To Do If You Have a Conflict of Interest*

If you think that you might have a conflict of interest in a matter coming before the commission, do not wait until the meeting to raise the issue unless that is the procedure in your conflict of interest ordinance. In any event, if you have any doubts, you should contact your municipal attorney or request your planning director to raise the question with the attorney well before the meeting. Your attorney is the best person to evaluate your possible conflict of interest.

If your ordinance provides that the commission determines whether a conflict exists, having your attorney's opinion on the question beforehand will help the commission make an informed decision on the conflict question. This will avoid unnecessary delays that might occur if the commission decides to seek the attorney's advice on the question.

If you have a conflict of interest, your ordinance may require that you publicly declare the conflict and abstain from voting on the matter. To meet the

requirements of the statute, it should require that you abstain from participating in any way in the decision. This would include the discussion and debate that precedes the vote on the matter. In fact, the recommended practice is for the commissioner with the conflict to vacate his or her seat and leave the room during the discussion of the matter and until the decision has been disposed of. This reduces the possibility and appearance that the commissioner's presence is affecting or influencing the decision.

### *Appearance of Fairness*

A discussion of conflicts of interest often includes consideration of the appearance of fairness doctrine. Simply stated, the doctrine requires that not only must hearings be fair, there must not even be an appearance of unfairness; even if no actual unfairness exists, the mere appearance of unfairness must be avoided. The application of this doctrine improves the appearance of the integrity of the commission and its decisions. However, its application often makes the concept of "substantial financial interest" irrelevant because it can require abstention when there is no financial interest at all.

Fairness is the touchstone of procedural due process and is the basis for the courts' creation of the appearance of fairness doctrine. While procedural due process has a place in quasi-judicial proceedings, some courts have imposed the appearance of fairness requirement on legislative proceedings.



**Financial Disclosure**

Alaska's Public Official Financial Disclosure Law, AS 39.50, must also be considered in relationship to the conflicts of interest requirements. In fact, in the past, it was called the Conflict of Interest Law, even though it has never regulated or prohibited conflicts of interest. It only requires that certain public officials, including planning commission members, annually file a statement disclosing the official's financial interests held during the preceding year. Public financial disclosure is intended to discourage public officials from promoting a private or business interest in their performance of a public duty and to assure that public officials are free of the influence of undisclosed private or business interests in their official acts. The law is further intended to develop accountability in government by permitting public review of the personal finances of office holders.



Members of a municipal planning commission must file the disclosure statement with their municipal clerk. You should be able to obtain from your municipal clerk a copy of the instruction manual published by the Alaska Public Offices Commission (APOC) that explains the requirements of the law. Failure by a commissioner to make a timely disclosure required under AS 39.50 will not jeopardize commission decisions; however, it will subject a commissioner to civil fines imposed by the Public Offices Commission

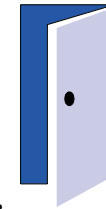
or possible misdemeanor prosecution by the state.

AS 39.50 requires that each financial disclosure statement be an accurate representation of a commissioner's financial affairs and, to the extent known, the financial affairs of specified family members for the prior calendar year. It must be filed under oath.

AS 39.50.145 allows municipalities to exempt themselves from the financial disclosure requirements of AS 39.50 upon an affirmative vote of the residents. Your municipal clerk or the Alaska Public Offices Commission can tell you whether your municipality has exempted itself from the financial disclosure requirements of AS 39.50.

**Open Meetings Act**

Alaska's open meeting law (AS 44.62.310) has been in effect since Statehood; however, until 1980 there was no mention of the act in any court decisions. Since 1980 there has been an increase in litigation concerning the Open Meetings Act. This interest in the act should cause local planning commissions to carefully examine their practices to ensure compliance with the Act.

**What legal basis do you use for your decisions?**

- ✓ Federal and state constitutions
- ✓ State enabling legislation (AS 29)
- ✓ Municipal charter
- ✓ Local regulations
- ✓ Procedures in your code
- ✓ Commission bylaws



### *What Does the Act Require?*

AS 44.62.310(a) provides that:

All meetings of a governmental body of a public entity are open to the public [with certain exceptions].

The purpose of the act is to ensure that the public has a reasonable opportunity to observe governing body decision making. Decision-making involves not just the voting on a matter, but the discussion and argument leading to the vote and the information gathering process as well. The Act gives the public the opportunity to observe, but not the right to speak or give testimony at meetings. The local ordinances usually provide specifically for the right to be heard at meetings.

Municipal assemblies, city councils, boards, commissions, committees, and similar bodies with authority to establish policies, make decisions, advise, or make recommendations are covered by the Act. The Act further provides that any action taken contrary to the Act is voidable. In general terms the Act requires:

**Open Forum.** Any fact gathering, investigation, or discussion regarding public business, formal or informal, must be open to the public.

**Reasonable Public Notice.** Unless a legitimate emergency exists, reasonable

public notice should be provided for all meetings of the commission. The notice must include the date, time and place of the meeting. It is common to provide a week's notice or longer. Notice of commission meetings must be posted at city hall or borough headquarters and must be given in a consistent fashion for all commission meetings.

**Teleconferencing.** Meetings held by teleconference must be open to the public and must meet Open Meeting Act requirements, including giving notice of the teleconference site locations and having available commission materials at teleconference sites.

**Open Voting.** Except for a vote to organize the commission, the voting shall be conducted so that the public knows the vote of each person entitled to vote.

**Executive Session.** Specific procedures must be followed in order to hold an executive session, that is, a session in private behind closed doors.

### *How is the Act Interpreted?*

The act is interpreted liberally and in favor of openness. Any discussion of public business by a majority is definitely a meeting; however, a majority may not be required for a violation of the Act to occur. For all bodies with eight or more members, a gathering of four members is sufficient. A meeting encompasses every step of the decision-making process including

information gathering and preliminary and informal deliberations where no decision is made. To be safe, whenever commissioners are gathering facts, exchanging ideas, suggesting strategies, or otherwise dealing with matters of substance, they should be alert to the possibility that they are engaged in a meeting of a public body and must comply with the Act.

### *What Happens If the Act Is Violated?*

The Alaska Supreme Court has taken a stern view of violations. Any action taken by the planning commission in violation of the Open Meetings Act can be made void by the court.



When the commission follows the procedures required by the Open Meetings Act, political or legal problems are seldom raised. It is when the procedures are ignored, either intentionally or unintentionally, that the public and the press may become alarmed and assume the worst about secret meetings. Planning commissioners should ensure that proper procedure is followed at all times.





## THE COMPREHENSIVE PLAN

The most common function delegated to a planning commission is preparing the comprehensive plan for the community.

### Definition of a Comprehensive Plan

The comprehensive plan is a blueprint for guiding development in a community and includes information on the many facets of a community such as population/demographics, physical conditions, land use, the environment, transportation, and legal and fiscal aspects. The plan reflects the vision and direction of residents. Through the comprehensive plan's vision, goals, objectives, policies and implementation strategies, it provides a framework for decision-making regarding land use, transportation, housing, public facilities, and economic development.

While the comprehensive plan deals with growth and development in general, it must not be vague or difficult to interpret. The success of the comprehensive plan depends on the community's commitment to planning and its acceptance of the plan as a valid expression of community attitudes, values, and agreed-upon direction. It helps ensure predictability in the future by guiding decisions and courses of action that are taken today.

The comprehensive plan can be referred to as the general plan, master plan, or even the land use plan, and is meant to serve several purposes.

#### *Fulfills Legal Obligations*

Alaskan communities must have an adopted comprehensive plan before they may adopt land use regulations such as a zoning ordinance. Increasingly, state and federal agencies require a plan as a condition of receiving grants.

#### *Provides Vision of the Future*

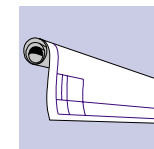
The plan contains long-range goals, objectives and policies that describe how, where, and in what manner physical development of the community will occur. The plan contains a map depicting intended land use by both type and location. The plan also links together physical development with considerations about social needs and economic development.

#### *Serves as a Decision-Making Tool*

The plan is a guide for decision-making and a blueprint for growth. Elected officials and planning commissioners will rely on and use a thoughtfully prepared plan when they make decisions that affect and shape the community's future.

#### *Serves a Coordinating Function*

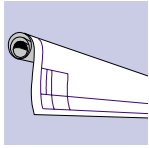
The plan provides an opportunity to place under a single cover, policies for a wide range of municipal activities such as land use, utilities, recreation, and transportation. This coordinating function of the plan can



### The Comprehensive Plan

- The Definition of a Comprehensive Plan
- Comprehensive Plan Preparation
- Elements of a Typical Comprehensive Plan
- When to Update or Rewrite the Comprehensive Plan
- Additional Comprehensive Planning Subjects





## A high-quality plan includes:

- ☐ A systematic and comprehensive collection and analysis of data
- ☐ Clear and comprehensive goals
- ☐ Specific, action-oriented policies for implementation
- ☐ Local official support
- ☐ Local community support
- ☐ Current and up-to-date data and policies

reduce the opportunity for contradictory policies from different municipal departments.

## Comprehensive Plan Preparation

A community that undertakes planning establishes a degree of predictability and certainty over the patterns and costs of community growth. Change, and the associated problems and issues, provides both focus and motivation for comprehensive planning.

Planning is a dynamic, ongoing process, but it is possible to organize it into a series of discrete or separate steps.

### *Plan to Plan*

Allocate time, human resources, money, and energy to the effort. Do not assume these factors will manage themselves or can be dealt with as problems arise.

### *Structure and Schedule the Process*

Determine the role the public will play, identify key stakeholders who need to be involved, decide how the plan will be developed (in-house or by a consultant), decide how the plan could be organized, and decide the role of the governing body in the process. Prepare a plan development schedule with key milestones so the project stays on track.

### *Identify Issues and Problems*

Preparation for a community-based comprehensive plan requires identifying

the reasons for undertaking the planning and establishing basic directions for the planning process. It requires both technical analysis and citizen participation.

### *Gather and Analyze Community Conditions*

Describe and analyze the community's current physical, environmental, and social and economic characteristics.

### *Identify the Community's Vision*

A vision statement directs the development of plan goals and objectives. A vision statement affirms what the community wishes to become in the future.

### *Develop Plan Goals and Objectives*

Describe the major themes that characterize the community's direction and purpose and the means of realizing them.

### *Identify and Evaluate Plan Options*

The comprehensive plan process identifies several alternatives for future growth and development based on planning assumptions. These possible land use scenarios are tied to the vision, goals and objectives.

### *Select Planning Option or Scenario*

The next step in the planning process includes analysis and selection of a preferred planning alternative with maps and plan policies that will achieve the vision, goals, and objectives.

### *Implement the Plan*

The final step in the planning process is the adoption of plan policies to implement the preferred option. Further implementation of the plan depends on land use regulations, capital improvements plans, and day-to-day decisions of the staff, commission, and elected officials.

### *Review and Monitor the Plan*

Keep the plan up-to-date and useful through scheduled review and revision. Create a “steering committee” to keep up with the plan as it progresses.

Change is inevitable, and over time, development will affect the places we live. The kind of development that takes place, however, can be managed and regulated. Change can be good or bad and the community can either improve or decline. Planning can play an important role in improving life in the community, and making the community a better place to live.

“Plan Preparation Steps” PC Journal No.39 Summer 2000

### **Elements of a Typical Comprehensive Plan**

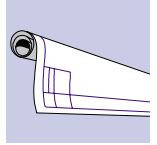
AS 29.40.030(a) describes the elements that comprise a comprehensive plan:

The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the first or second class borough,

and may include, but is not limited to, the following:

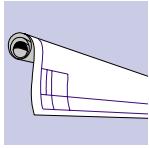
A plan may include:

- General statement of goals and objectives
- Background report:
  - Regional needs
  - Historic and cultural resources
  - Coastal and natural resources
  - Sensitive environmental areas
  - Population trends
  - Transportation facilities
  - Utilities and infrastructure
  - Housing resources and needs
  - Educational, cultural and historic facilities
  - Health and emergency facilities
  - Park and recreational facilities
  - Commercial and industrial facilities
- Land Use Plan
- Community Facilities Plan
- Other plans such as parks and recreation, flood mitigation, and coastal management
- Implementation – principles, policies, and standards
- Plans of other agencies and communities
- Strategies for improving the local economy



### **Title 29 Plan Contents**

- ✓ Statements of policies, goals, standards
- ✓ Land use plan
- ✓ Community facilities plan
- ✓ Transportation plan
- ✓ Recommendations for implementation of the comprehensive plan



### When to Update or Rewrite the Comprehensive Plan



To determine when to update or rewrite the comprehensive plan, consider the following:

**Adoption Date of the Comprehensive Plan.** Examine the plan every 2-5 years to determine if the data and other parts of the plan are still relevant.

**Changes in internal policies and conditions.** For example, the city or borough might decide to sell or dispose of major municipal lands or buildings. This would most likely result in a need to update and revise the plan and ordinances.

**Changes in external conditions.** The construction or extension of a major public facility, such as a sanitary sewer or highway is likely to have impact on future development in the community and signals the need to update and revise the plan and ordinances.

**Frequent amendments to the comprehensive plan and zoning ordinances.** If the plan is amended frequently or there are a substantial number of rezones, this may be a signal that a revision is needed.

**Local policy.** Some communities update their plan on a periodic basis as a matter of policy.

**Usefulness.** The plan is not being used.

### Additional Comprehensive Planning Subjects

In addition to the typical elements defined by statute, the following planning subjects may also be included in the comprehensive plan. Inclusion of these planning subjects will add breadth and value to the comprehensive plan, assist with decision-making, and overall improve the quality of development in the community.

#### *Transportation*

Transportation is an essential service function in a community along with water supply, wastewater disposal, fire and police protection, schools, and recreational facilities. The transportation system often is the foundation upon which a community is built. Roads, trails, pedestrian amenities, airports, marine ferry system, and ports, harbors and docks all comprise the transportation system. The purpose is in the community to move people and goods within and to-and-from the community. The system should support the needs of the people in the area covered by the system. The location of transportation improvements impacts land uses and the local economy.

Historically, transportation planning focused on urban issues such as the construction of major facilities – freeways, airports, ports, and transit systems. In many cases in Alaska, the transportation system was treated separately from the comprehensive plan.

This is starting to change. Today transportation planning is now linked more with land use and community planning. Citizens are more involved in the decision-making process and more interested in how the transportation system fits with their community's goals for growth and livability. Coordinating transportation plans and community-based plans is vital to addressing priority projects.

### *Parks, Recreation, and Trails Plans*

These are an expression of the community's objectives, needs, and priorities for the provision of leisure space, and recreation services and facilities. The plan provides a guide for public policy and private decisions related to the scope, quality, and location of leisure opportunities to meet the needs of residents and visitors. The plan should be long-range and comprehensive. It should describe alternatives, recommendations, and guidelines for public and private decisions related to the use and preservation of open space for recreation. The plan should detail community recreation needs (parks, trails, facilities) and translate them into specific sites to acquire or develop. It also details policies, practices, or criteria related to the design and management of

these spaces and services. The community will review how a specific subdivision will impact those needs defined in the Parks, Recreation, and Trails Plans. This is important because once land is developed, it almost never reverts to a pre-developed condition.

### *Open Space Plans*

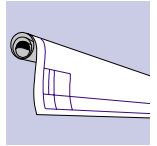
Plans to meet the need (psychological and physical) for contrast and change from the indoor environment. Whether it be private open space (retention of vegetation through site-development requirements) or public (parks or wilderness), open space relieves the stressfulness of the urban environment. The open space plan is not the same as the parks and recreation plan. Open space plans define areas for active and passive uses and policies for acquisition and management. The plans can also set aside natural areas such as wetlands, habitat or subsistence use areas as open space. As with parks, once land is developed (i.e. with structures or roads), it almost never reverts to open space.

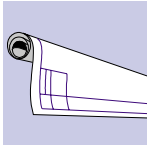
### *Housing Plans*

Housing Plans address infill, urban renewal, rehabilitation, and small business development. Housing is one of the most important elements in our lives and our communities – socially, physically, and economically. In Alaska, federal agencies such as the U.S. Housing and Urban Development (HUD), the U.S. Department of Agriculture/Rural Development, and the Federal Housing Authority (FHA) as

“The Capital Improvements Program (CIP) is a tool the Planning Commission can use to describe the relationship between capital projects and the goals and objectives of the comprehensive plan.”

- CIP, Part I, Michael Chandler  
PC Journal, Number 25  
Winter 1996-1997





“You have brains in your head.  
You have feet in your shoes.  
You can steer yourself  
in any direction you choose.  
You’re on your own.  
And you know what you know.  
And YOU are the one who’ll  
decide where to go ...”

- Theodore Seuss Geisel,  
a.k.a. Dr. Seuss, 1904-1991

well as the Alaska Housing Finance Corporation and regional housing authorities influence the funding of affordable housing in communities. Location of new housing and the feasibility of rehabilitating older housing are the greatest determinant of where future infrastructure, such as water, sewer, and utilities, will go.

Local government has a very direct impact on housing through its comprehensive plan and zoning and subdivision regulations. Many governmental decisions affect housing, yet the housing implications of decisions made by the government are not often considered. Planning for housing must be an element of any comprehensive plan and implementation strategy. Since housing is primarily focused in the private sector, the role of the local government is often unclear. However, government can examine its review processes (zoning and subdivision controls and building codes) to ensure that the regulations do not inadvertently drive up the cost of the housing.

### *Economic Development Plans*

Economic Development Plans can be used to expand opportunity for commerce and industry and provide more jobs or job opportunities in the community. Economic development is about retaining existing businesses, starting new businesses in your community, and encouraging businesses to relocate to your community. Typically, planning commissions and the media focus only on the businesses moving to the community and ignore the other two

opportunities. A company just starting up or an existing company adding jobs may actually be more valuable than a business relocating to your community. New and expanding businesses may actually provide more, and often better jobs, than relocations do. Economic development plans also address ways to reduce costs of living within the community.

### *Annexation*

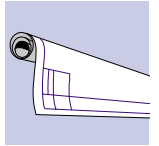
Annexation is the incorporation of land into a community. Often community planning goals for future growth and development include expansion of municipal corporate limits. Including a plan for annexation as a comprehensive plan subject requires the community do several things.

1. Identify the need for the annexation. Define what areas should be included in the annexation and what method should be used for annexation.
2. Determine the best boundaries for the annexation proposal. Review the boundary criteria in state statute and regulations.
3. Determine the fiscal impact of the annexation. What will be the financial implications for the community?
4. Ascertain the level of support for annexation. Keep the public informed of annexation plans and identify support and opposition for the petition.
5. Determine the appropriate method of annexation. There are five methods of annexation. Each requires approval by



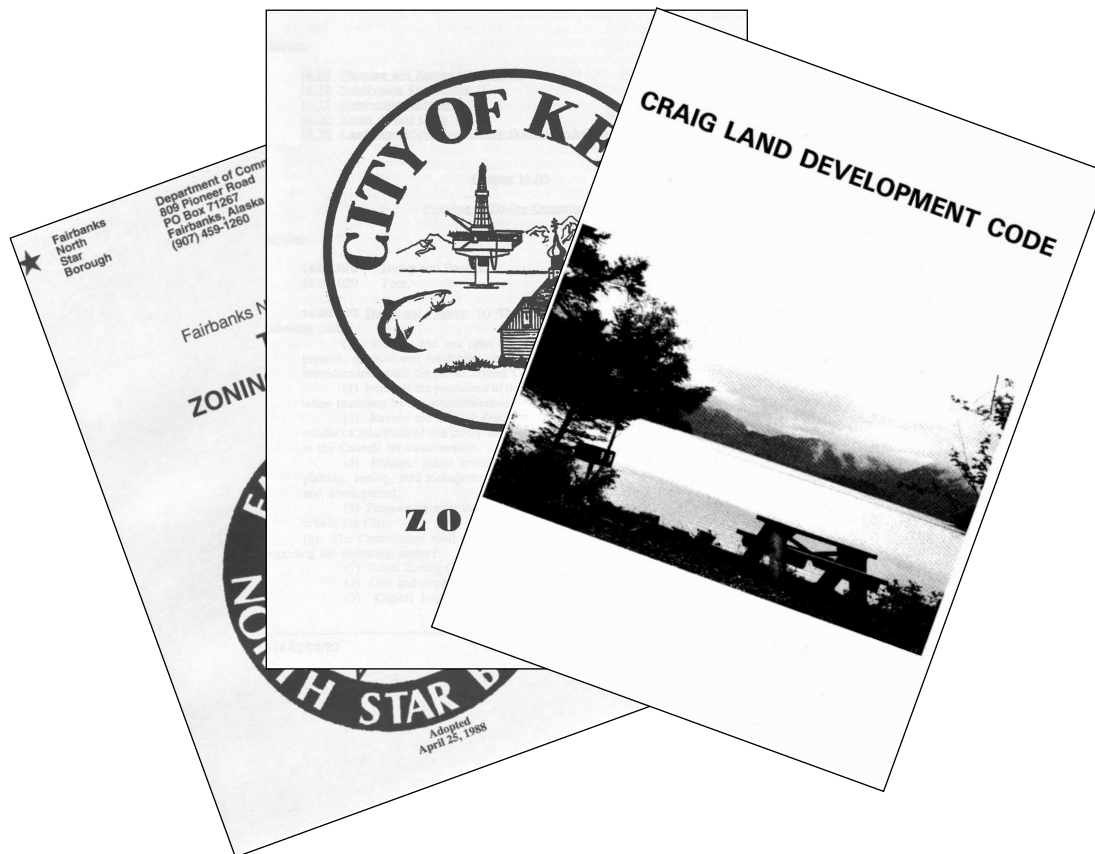
the Local Boundary Commission (LBC). The five methods are described in AS 29 or you can contact the LBC staff with the State Department of Community and Economic Development.

6. Decide whether to proceed. Reflect before committing the resources required to develop and process the annexation petition.



“The Commission is responsible for the capitol improvement plan, subdivision plat review, environmental issues, coastal management, development permitting and the economic growth of the Borough, which are all key to the success of the Borough. For these responsibilities a Commissioner needs to be versed on local as well as statewide issues as many of the decisions the Commission makes locally could have a lasting affect (good or bad) for years and in some cases decades.”

- Marv Smith, Community Development Director, Lake and Peninsula Borough



## PLAN IMPLEMENTATION

### Zoning Regulations

Zoning is the conventional method of land use regulation. It is a legislative process through which the local governing body divides the municipality into districts or zones, and adopts regulations concerning the use of land and the placement, spacing and sizing of buildings for each district.

#### *Purpose of Zoning*

The basic purposes of a municipal zoning code and map are to:

**Promote Public Health and Safety.** The zoning code may require setbacks between buildings to promote fire safety and to allow light and air to flow freely between structures. The code can be used to separate harmful or unpleasant land uses from residential neighborhoods. It can also be used to require lots large enough for safe on-site waste disposal.

**Protect Property Values.** Property values can be protected by creating long-term stability in neighborhoods through reducing or eliminating the potential for conflicting or incompatible uses. Commercial and industrial investments are also protected from other incompatible activities.

**Create Uniform Regulations.** The uniform regulations of zoning districts establish ground rules for developers, local officials, and the public at large.

**Reduce Nuisances.** Nuisances such as light, glare, dust, odor or noise can be reduced or contained on, or largely on, the site where they originate. Screening, vegetation or some other form of buffer can be required between, for example, a wrecking yard or storage lot and adjacent streets or roads, or nearby neighborhoods.

**Conserve Land for Appropriate Uses.** A municipality may have only limited land areas suitable for industrial or recreational activities. Waterfront property suitable for water-dependent uses may be scarce or in demand. Only certain parcels may be acceptable for generally unpopular uses like gravel pits and landfills. Zoning for appropriate uses can assure the availability of land important for community development.

#### *The Legal Basis for Zoning*

Zoning began in the United States in the early part of the 20th century as an attempt to promote public health, fire safety, and separate incompatible uses. In New York, for example, zoning began in an attempt to stop the spread of the garment district up 5th Avenue and to improve the safety and living conditions in tenements. Many lower courts had upheld zoning in the 1920s. It was not until 1926, however, that the United States Supreme Court ruled in the landmark case of The Village of Euclid v. Ambler Realty, that zoning was declared a lawful and constitutional use of the police power. Justice Sutherland stated in the majority opinion that:



### Plan Implementation

- Zoning Regulations
- Zoning Authorizations
- Subdivision Regulations
- Additional Implementation Tools





"each community has the right and responsibility to determine its own character and as long as that determination [does] not disturb the orderly growth of the region and the nation it is a valid use of the police power."

After this decision, zoning spread rapidly throughout the country and became the

most widely accepted means of regulating land-use activities. By the 1950s, zoning had become closely associated with comprehensive planning to the extent that the terms were often used interchangeably. In subsequent years, however, the comprehensive plan is recognized as a policy document and the zoning ordinance as a regulatory document. In fact, recent court decisions have made it clear that a municipality must have an adopted comprehensive plan before it may enforce a zoning ordinance. In Alaska, as in many other states, this is an explicit requirement of state law.

### *Authority for Zoning in Alaska*

Chapter 29.40 of Alaska Statutes provides municipal authority for planning, platting, and land use regulation. In addition, home rule governments may provide for local planning and land use authority through provisions in their home rule charters.

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AS 29.40.040(a) provides:

In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly [or city council] by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,



- (1) zoning regulations restricting the use of land and improvements by geographic districts;
- (2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;
- (3) measures to further the goals and objectives of the comprehensive plan.

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A municipality's zoning code consists of two parts: the map and the text. The map shows the location of different districts or zones, while the text contains standards for each classification, such as minimum lot size, setbacks, maximum building height, maximum lot coverage, floor area ratio, number of dwelling units per acre (density), and listings of permitted, accessory, conditional and prohibited uses.

## Zoning Authorizations

The zoning ordinance is generally comprised of a map depicting zoning districts such as residential, commercial, and industrial land uses, along with zoning regulations that indicate permitted,

conditionally permitted, and prohibited uses in those districts. Some zoning ordinances have more general zoning districts, such as central business district, downtown, suburban, and rural, with a focus on the impact and intensity of the type of development and associated design review standards.

The zoning ordinance establishes standards by zoning district for minimum lot size, minimum lot width and depth, setbacks between structures, maximum building height, parking, maximum and minimum lot coverage, signage, and other prerequisites for development. The ordinance also defines zoning-related authorizations such as variances, conditional use permits, planned unit developments, home occupations, accessory uses, and non-conforming uses. It will describe the administrative requirements for these zoning authorizations, permits, approvals, and appeals.

Two of the most common zoning authorizations are conditional use permits (CUP) and variances. These are described below.

### *Conditional Use Permits*

A conditional use is a use not allowed outright in a particular zone, but it could be permitted if conditions attached to the approval make the activity compatible with surrounding, allowed uses. A typical conditional use, one that most people will recognize, is a church in a residential



Zoning is an exercise of the local government police power. The police power is basically the government's right to place controls over individual behavior, including the use of private property, to promote the health, safety and welfare of the community at large.





neighborhood. State law does not cover conditional use permitting so municipalities are free to design a conditional use permitting system that best fits their needs.

“Commissions should avoid “sausage making”, a term often mentioned by former Anchorage Planning and Zoning Commissioner Bob Stiles. It is the petitioner’s job, and that of the staff, to craft a proposal that is as clean as possible, regardless of how abysmal it may be. When a commission begins trying to craft lengthy stipulations to make a project work, there will always be requirements that the petitioner or staff will not be able to appropriately interpret. If a motion begins to smell like sausage, postpone the matter to a later date and ask the petitioner and staff to craft a better proposal. The provide clear direction to the two parties with respect to what needs to be worked out.”

- Dwayne Adams, MOA Planning Commissioner

courts balk at very broad or vague standards, such as when a use is permitted if it "is in the best interests of the community" or would "promote the public health, safety and welfare." Such vague standards invite abuse so it is best to use more definite standards or to adopt regulations or interpretive rules better defining the standards, if they are vague.

Conditional use permits are sometimes called "special exceptions" or "special permits." They are a flexible planning tool that permit a developer to proceed with a project under restrictions designed to eliminate or reduce the adverse impacts that could occur if there were no restrictions on the use.

## Standards for issuing a CUP

The standards for issuing a CUP are as various as the governing bodies which enact them. Sometimes

## Purpose of the CUP

The purpose of the conditional use proceeding is to determine how the conditional use project can be made compatible with the abutting lots and the surrounding neighborhood. Standards such as "in keeping with the character of the neighborhood" or "consistent with the character of the uses authorized in the zoning district," or "eliminate or reduce properties," focus on the purpose of the conditional use permit. Such standards, if given honest and serious attention, will serve a commission much better than vague and very general standards. In addition to the conditional use standards, many codes also provide a list of adverse impacts to consider when evaluating a conditional use permit application. These could include such things as traffic generation, noise, lighting glare, on-street parking pressure, dust, damage to municipal roads, and visual impact (and the need for buffering).

## Variances

A variance is an exception from the strict terms of the zoning (or platting) code. It allows for the relaxation of the strict requirements of the code in certain extraordinary cases. Its purpose is to prevent the zoning code from prohibiting reasonable use of a lot because of some peculiarity of the lot not affecting other neighboring properties. It has been described as a safety valve that prevents a regulatory taking of property in cases

where in would be impossible to comply with the terms of the zoning code and still make a reasonable use of the property. It is essentially permission to violate the law that others must obey. It is an extraordinary remedy for an extraordinary situation.

### **Title 29 Requirements for Variances**

Title 29 contains explicit prohibitions on the granting of variances. The language in Title 29 is usually adopted verbatim in local zoning codes because, except for home rule governments, local governments are bound by it.

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#### **A variance may not be granted if:**

1. The person seeking the variance causes the special conditions that require the variance.
2. The variance will permit a land use in a district in which that use is prohibited.
3. The variance is sought solely to relieve financial hardship or inconvenience.

AS 29.40.040(b)

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Variances can be "use variances" or "area variances." As the name implies, a use variance permits a use otherwise prohibited in a given zoning district. AS 29.40.040(b)(2) prohibits use variances for general law municipalities; however, home rule municipalities are not prohibited from allowing them. Area variances provide

relief from setback, frontage, height, density, and similar requirements and are permitted by AS 29.40. Both general law and home rule governments may issue area variances.

### **Granting Variances**

Most zoning ordinances authorize the granting of a variance to relieve "unnecessary hardship." AS 29.40.040 prohibits variances solely to relieve financial hardship or inconvenience, but the commission can take such hardship into account if it is serious enough and sufficiently related to the land. A court will usually find that a hardship exists if the property to which a zoning requirement applies cannot be put to some reasonable use consistent with the zoning regulations. In other words, if a zoning regulation deprives the owner of all beneficial use of the land because of a peculiarity of the land itself, the owner is entitled to some relaxation of the regulation. A mere reduction in value is not a hardship. A complete inability to sell the property for any permitted use, after a good faith attempt to sell it, is sometimes accepted as evidence of a loss of reasonable return.

A "hardship" deserving a variance must usually be caused by circumstances unique to the property involved and an applicant will be required to show that his/her neighbors do not suffer from a similar hardship. Examples of hardships justifying a variance would be the



### **Variances**

- ✓ Hardship demonstrated
- ✓ Standards of review applied
- ✓ Findings written and adopted
- ✓ Due process followed

**A variance cannot be granted if the hardship is self-imposed.**



existence of a stream crossing the applicant's land in such a manner that it leaves no reasonably buildable area, making compliance with setback requirements impossible, or the presence of unbuildable soils or steep slopes unique to a particular lot.

One "standard" must be avoided. Public sentiment, whether it is for or against a variance, is never a reason to grant or deny a variance. This is a tough rule to remember when a hearing is filled with angry neighbors, but the commission's job is to determine whether the property qualifies for a variance, not whether granting the variance has substantial public support or opposition.

When a property owner has shown that a property meets the standards for granting a variance, it must be granted. The commission has no discretion to deny it. Conversely, because a variance is to be granted only in exceptional cases and the grant amounts to a dispensation to violate the law, variances may not be granted unless all the standards for the variance have been proven. The commission has no authority to grant a variance in the absence of any one of the required standards.

### **Use of Variances to Solve Planning Problems**

If the commission is granting a lot of variances, it probably needs to examine the zoning code for deficiencies. The code could be too restrictive or simply not take into account the unique topography and

environmental conditions that may exist in the municipality.

As in other quasi-judicial proceedings, the commission must observe the due process requirements of the U.S. Constitution, and it must include written findings and conclusions in its decision to grant or deny a variance.

## **Subdivision Regulation**

### *Purpose of Regulation*

How does a planning commission shape its community character? One very important way is through the subdivision or platting ordinance. These are essential tools that can be used to influence the layout of lots and streets and coordinate the construction of public infrastructure to support homes and businesses. The location and size of platted lots establishes a template for community development. When land is platted, the pattern of physical development is set and is, for all practical purposes, irreversible.

The subdivision ordinance regulates the division of land into building lots for the purpose of sale, development or lease. The ordinance specifies procedures that are to be followed when land is divided and built upon. When used in conjunction with the comprehensive plan and the zoning ordinance, the subdivision ordinance assures that the land development process is accomplished in an appropriate and consistent manner.

***Reasons for Regulating Subdivisions***

The reasons a community might have for regulating the subdivision of land are:

1. Design of street pattern – connections with existing and future streets
2. Design and width of streets – efficient movement of traffic, ability to provide fire protection, and surface drainage of storm water
3. Water supply and sewage disposal – ensure these services can be provided either by the community or property owner
4. Lot layout – adequate descriptions of lots avoid boundary disputes and ensure access and adequate area for wells, septic systems, and buildable areas.

The extent to which a community regulates subdivisions will vary. One community might simply have minimum provisions required by statute. Another community may have more extensive requirements such as protection of stream banks, provision of sidewalks and streetlights, or provisions for clustering housing on the most buildable portion of a site. Despite the potential for variation, the purpose of platting remains substantially similar from municipality to municipality. The purpose is to guide the conversion of vacant land into improved or developed land, consistent with technical requirements and community standards.

**An Introduction to Subdivision Regulations**

A typical subdivision ordinance might contain the following requirements:

- √ Approval by the Alaska Department of Environmental Conservation (ADEC) of all on-site wastewater and sewage disposal
- √ Provision of buffers along anadromous fish streams
- √ Provision of adequate drainage facilities to minimize run-off and possible damage to adjacent properties
- √ Dedication of streets and platted rights-of-way consistent with the municipality's existing and planned streets and roads
- √ Minimum widths for dedicated streets and utility easements
- √ Minimum and preferred lot and block dimensions and arrangements
- √ Dedication of easements for locating utilities, with a requirement that utility installations match up with the community's existing system
- √ Assurance that all lots abut on a platted





right-of-way

- ✓ Dedication of land for parks or public open space
- ✓ Construction of public improvements such as streets, sewer and water lines
- ✓ Underground installation of electric and communication cables

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While these provisions may change from municipality to municipality, their basic intent is to assure that newly created lots do not become problems, and create unanticipated costs for their owners, the local government, or the owners of adjacent lots.

### *Subdivision Procedures*

Chapter 29.40 of Alaska Statutes establishes some common platting provisions for municipalities, but also states that a plat may show "other information that may be required by ordinance." This provision provides local governments with latitude in fashioning platting standards that are appropriate for local conditions.

### **Platting Procedures**

- ✓ Procedures for the review and approval of preliminary and final plats
- ✓ Standards and criteria for the submission of preliminary and final plats
- ✓ Waiver provisions for land subdivisions that do not require close scrutiny; for example, the creation of four or fewer lots each five acres in size or larger consistent with AS 29.40.090(a)
- ✓ Definitions of the terms used in the platting ordinance
- ✓ Standards for the survey and monumentation of platted lots
- ✓ Subdivision design standards for street width, grade, cul-de-sacs, intersections
- ✓ Standards for the provision of water, sewer, electrical, and telephone utilities
- ✓ Provision for penalties and appeals

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Basic information on the preliminary plat map gives the planning commission a solid foundation from which to evaluate the proposed subdivision. While commissioners should consider visiting the site of a proposed subdivision on their own to gain some first-hand understanding



of the proposal, such visits should be made with care as the visit can create an ex parte communication problem, especially if anyone associated with the subdivider or anyone who opposes the subdivision accompanies the commissioner on the site visit. *Ex parte* communications are covered in Chapter Four.

### *Requirements for Preliminary Plat Maps*

The following information should appear on a preliminary plat map:

- ✓ The signature and seal of a land surveyor or licensed to practice in the State of Alaska
- ✓ A title block in the lower right-hand corner containing the following information
  - a. Proposed name of the subdivision
  - b. Scale (not to exceed 100 feet to the inch)
  - c. Date of application
  - d. Name and address of the property owner
  - e. Location of the subdivision by reference to U.S. survey numbers
- ✓ A north arrow
- ✓ The location of existing and proposed property lines
- ✓ The size of each parcel created by the subdivision, expressed in square feet
- ✓ The linear dimensions of each lot created by the subdivision
- ✓ Topographic lines at ten (10) foot intervals

- ✓ The location of significant natural features such as, but not limited to, creeks and watercourses, wetlands, outcrops and significant habitats
- ✓ The location and purpose of all easements and rights-of-way
- ✓ The location and type of all improvements including, but not limited to, drainage ditches, culverts, utilities, streets, sidewalks, and public open space

### *Submittal and Approval of Final Plat*

In the typical process, the platting board or planning commission sitting as the platting board reviews the preliminary plat and determines whether it is in compliance with all of the standards in the municipal platting code. Upon completing its review, the platting board may approve the preliminary plat as submitted; approve the preliminary plat with additional conditions or stipulations; or reject the preliminary plat with cause. The board must set out the reasons for its acceptance or rejection of the plat. The process for setting out these reasons is covered in Chapter Three, Findings.

Upon platting board approval of the preliminary plat, the applicant must submit a final plat consistent with the approved preliminary plat. The applicant must make all public improvements to the subdivision as a condition of final plat approval. Some municipalities permit a plat to receive final plat approval before the required improvements are constructed



“Preliminary Plat is a significant milestone for the applicant, who can then proceed with some confidence that the commission will approve a consistent final plat.”

- An Introduction to Subdivision Regulations, Martine L. Leitner, Esq., and Elizabeth A. Garrit, Esq. PC Journal Number 5, July/August 1992



and accepted if the subdivider has provided adequate security to guarantee their construction by a specified date. Types of security might include a performance bond, cash, or real property to be held in trust by the municipality. Once the platting board approves the final plat, a copy of the plat must be submitted to the district recorder's office, and lots may be sold.

### *Major and Minor Plats*

Subdivisions typically qualify as major plats if they have five or more lots. Minor plats, also known as short plats, typically have four or less lots. The procedure for review of major and minor plats should be set forth in the local subdivision code.

Minor plat review is usually intended to allow for an expedited review of a subdivision that is expected to have “low impact” (i.e., fewer lots, less road development, no dedications or vacations needed, on land already determined suitable for development; not subject to natural hazards). However, the approval of a minor plat is based on the same considerations that apply to a major plat. These considerations include: compliance with design standards of the local regulations; compliance with the comprehensive plan; and compliance with the primary subdivision criteria.

### *Vacation of Rights-of-Way*

A vacation is the formal action for abandoning or revoking a public right to use an easement, trail, or right-of-way.

The process for vacations is essentially the same as the subdivision process. Title 29 provides that no vacation may take place without the approval of the appropriate governing body – this may be the planning commission or, in some communities, a platting board.

Typically, a vacation requires concurrence and signature of the majority of the owners of land adjoining the proposed vacation. The applicant for the vacation must also demonstrate that the area proposed for vacation is no longer practical for the uses or purposes authorized or that other provisions have been made which are more beneficial to the public.

### *Additional Implementation Tools*

Zoning and subdivision regulations depend on the comprehensive plan. The comprehensive plan is the “roadmap” which captures in text, maps, and graphics, what a community envisions for itself in the future. Although the comprehensive plan addresses land use principles, it does not regulate land use nor does it define in great detail how the land is to be developed. This is the role of zoning and subdivision ordinances. The comprehensive plan provides the public policy basis for zoning districts and the rules for

development of land that, when used in combination, direct what happens on the land.

While zoning and platting are the typical means of implementing the comprehensive plan, there are other tools. The commission can use other measures to further the goals and objectives of the plan.

These other measures can include, but are not limited to, such things as:

- ☐ Municipal entitlement program
- ☐ Municipal land management program
- ☐ Capital improvements program
- ☐ Coastal management program
- ☐ Statewide Transportation Improvement Program (STIP)
- ☐ Sanitation master plans
- ☐ Municipal budget
- ☐ Design review standards
- ☐ Floodplain regulations
- ☐ Land Management Plans of State and Federal Agencies
- ☐ Historic preservation standards
- ☐ Environmental impact assessments

### ***Municipal Entitlements***

Since 1962, the state legislature has granted state land to local governments for several reasons: to provide an incentive to form

local governments, to provide a means of revenue production through sales or lease that expand the municipal tax base, to provide land for community development and public facilities, and to provide local public recreation opportunities.

Under the 1978 Municipal Entitlement Act, boroughs and home-rule municipalities in existence in 1978 were granted specific acreage of state land based on negotiations that factored in population, the size of the municipality, and availability of state land within their boundaries. For more information on this program and process, contact the Division of Land in the Alaska Department of Natural Resources.

### **Borough entitlements established by the 1978 Act:**

Municipality of Anchorage – 44,893 acres  
 City and Borough of Juneau – 19,584 acres  
 City and Borough of Sitka – 10,500 acres  
 Bristol Bay Borough – 2,898 acres  
 Fairbanks North Star Borough – 112,000 acres  
 Haines Borough – 2,800 acres  
 Kenai Peninsula Borough – 155,780 acres  
 Ketchikan Gateway Borough – 11,593 acres



### **Borough Entitlements formed since 1978:**

Northwest Arctic Borough

– 285,000 acres

Aleutians East Borough

– 7,633 acres

Lake and Peninsula Borough

– 125,000 acres

City and Borough of Yakutat

– 138 acres

Denali Borough

– estimated at 51,000 acres



Kodiak Island Borough – 56,500 acres  
Matanuska-Susitna Borough – 355,210 acres

North Slope Borough – 89,859 acres

## *Municipal Land Management*

Cities and boroughs may acquire, manage, control, use, and dispose of any real property or interest in real property inside the municipal boundaries. The acquisition of real property by a city or borough can be made by a number of methods:

- ☐ Purchase or lease for compensation to the property owner
- ☐ Donation or partial donation (if accepted by the municipality)
- ☐ Dedication (if accepted by the municipality)
- ☐ Exchange of real property for equivalent fair market value consideration
- ☐ Eminent domain, pursuant to A.S. 9.55.254 through 9.55.460
- ☐ State or federal grant
- ☐ Property tax foreclosure
- ☐ Any other means permitted by law

Cities and boroughs may select vacant, unappropriated, unreserved lands of the

State of Alaska from time to time as such lands become available for selection.

## *Municipal Land Disposal Methods*

City or borough-owned real property, or any interest in real property, may be conveyed by deed or leased by the municipality using a number of methods of disposal such as:

- ☐ Public auction
- ☐ Exchange for other real property owned by a person, another municipality, the State of Alaska, the United States of America, corporations, trusts, or other legal entity
- ☐ Over-the-counter programs
- ☐ Lotteries, whether gaming or non-gaming;
- ☐ Competitive bid via auction or request for proposal
- ☐ Agreements by application
- ☐ Remote parcel disposal programs
- ☐ Homestead program
- ☐ Real estate brokers
- ☐ Any other means permitted by law

City or borough-owned real property, or an interest in real property, may be

dedicated for public purposes; granted or reserved for easements and rights-of-way; and permitted for utilities or encroachments in accordance with local regulations. Many municipalities require that a best interest finding be made and approved by city council or assembly resolution when disposing of, exchanging, or otherwise conveying an interest in real property. These requirements should be described in a land disposal ordinance. All land disposals must be completed by ordinance.

### *Capital Improvement Program*

The capital improvement program (CIP) is one of the most powerful tools for implementing a community's comprehensive plan when CIP projects are linked to the goals and objectives of the comprehensive plan. The CIP ultimately influences the pace and quality of development in a community.

### **Contents of the CIP**

A completed CIP contains a list of capital improvement projects by priority, information about each project, a schedule for seeking funding, and a construction schedule. The CIP will include projects that are needed right away and projects that will be needed over the next five or six years. Each year as the projects are funded and completed the CIP is updated to add new projects and to reflect changes in community needs and priorities.

The CIP will list major non-recurring expenditures for libraries, museums, fire and police stations, parks, civic centers, street construction or reconstruction, sewage and water treatment plants, and water and sewer lines. Costs associated with capital projects include engineering and architectural fees, feasibility studies, land appraisal and acquisition, construction and related furnishing, and equipment for new facilities.

### **The CIP will typically contain the following three elements:**

1. An overview of the CIP process and a listing of the benefits a community will derive from the improvements
2. A section on financial data with historical revenue and expenditures data along with projected revenue, expenditure and debt service
3. Projects recommended for funding during the CIP period, the relationship of the project to the community's comprehensive plan, and how the projects will be financed

### **CIP Preparation**

Local government practices vary as to how the CIP is prepared. The responsibility for preparing the CIP may be that of the



### **Steps for preparing a CIP might look like this:**

- ✓ Establish a schedule and procedures
- ✓ Identify capital improvement needs
- ✓ Evaluate and rank project needs
- ✓ Develop additional information about priority projects
- ✓ Complete and adopt CIP
- ✓ Seek or budget funding for first year projects
- ✓ Update CIP

- "CIP Process" PC Journal  
Number 25, Winter 1995





municipal manager's office, the public works department, or the planning department. Typically, proposals from all operating departments are submitted several months before the beginning of the new fiscal year. The municipality's finance department, manager, public works director, and planner will evaluate them, determine the local government's ability to pay for the new projects based on revenue forecasts, and then organize the projects into a schedule.

### **Role of the Planning Commission in the CIP Process**

The planning commission is involved in identifying projects that eventually appear in the CIP because of the impact that the projects may have on the community's physical development. Sometimes the commission may advise elected officials and the administration on general priorities for selecting projects. The commission will review the draft CIP against the backdrop of the comprehensive plan and forward its recommendations to the governing body. Public hearings are a part of the CIP process. The public hearing may be before the planning commission or governing body or both.

### **Questions the planning commission might ask when reviewing a proposed CIP:**

✓ Does the project appear in the local comprehensive plan? If a high priority project in the comprehensive plan has been postponed, such as road widening

until development reaches a certain level in a commercial corridor of the community, ask why.

- ✓ Does the comprehensive plan have policies to ensure that certain urban design or architectural requirements are met with new facilities such as civic and recreational centers and libraries?
- ✓ Is the project well thought out?
- ✓ Is the project related to other projects and is the sequence of construction reasonable? For example, the water department should install a water line in a street before the street department undertakes resurfacing to avoid digging up a freshly surfaced (paved or gravelled) street
- ✓ If the project serves a developing area, what are the assumptions as to the levels of service and the ultimate population of the area as anticipated in the comprehensive plan?
- ✓ Have all agencies that might be affected by a project been contacted? For example, the school board might want to coordinate the location of a new school site with the acquisition of a new park.
- ✓ Is there balance between repair and maintenance of facilities in mature neighborhoods verses installation of new improvements in developing areas? Is one part of the community getting more than its fair share?
- ✓ Is the local government spending enough on capital projects in comparison with annual operating expenses or is it falling behind in responding to community growth and change?

## *Alaska Coastal Management Program*

### **Roots of the Program.**

The roots of the Alaska Coastal Management Program (ACMP) are founded in the Federal Coastal Zone Management Act of 1972 (CZMA). This act was developed in response to rapid development along the nation's coasts, increasing coastal impacts, and competing demands for such things as public access, housing, tourism, recreational facilities, and off shore oil development, along with more traditional uses like fishing and harbor and port development.

In 1977, the Alaska Legislature voluntarily created the Alaska Coastal Management Act (ACMA), as envisioned by the national CZMA. The Alaska program was developed in response to an increase in federal oil and gas leasing, the large amount of federally owned land in the state, an increase in community interest in having a voice in development issues, and an increase in demands on coastal resources.

### **How the ACMP Works.**

The ACMP is administered by DNR. The "project consistency review" process is designed to manage the use and development of coastal resources. Any project that may affect coastal resources and that is a federal activity or needs a federal approval must be found to be consistent with the ACMP before any permits may be issued. The consistency

review process is coordinated between the local, state, and federal agencies.

With the passage of the ACMA, municipalities, rural regions of the unorganized borough, and the State of Alaska began to cooperatively manage the use and protection of Alaska's coastal resources. Local communities that are part of a coastal district, may participate in the state program. Participation is voluntary.

Districts may identify important local issues, describe local coastal resources, and guide the use, protection, and development of these resources through development of enforceable policies which address local issues and are implemented locally. Additionally, district policies may be incorporated into the ACMP giving them the force of regulation on the state level. In this way, district participation in the ACMP gives communities the opportunity to help shape development in the coastal zone so it reflects the needs and values of the local residents.

Districts are provided funding from the state for research and education of coastal issues, coastal planning and local implementation of enforceable policies.

### **What is the role of the Planning Commission and the ACMP?**

If a proposed project in the coastal zone requires a local permit, such as a conditional use permit, the coastal district coordinates the review and makes a





determination of consistency for that local permit. Assessing the consistency of proposed projects and activities with the district's enforceable policies is critical. Such a review provides the district with the opportunity to share its expertise regarding local issues and provides a forum for public participation in the project review. This is where the local planning commission plays an important role. Not only must the commission make findings regarding the legality of the conditional use permit as it relates to the local comprehensive plan and zoning code, they must also review the project for consistency with the coastal district enforceable policies.

From time to time a district should evaluate its policies and assess the need for an update. The planning commission will participate in district policy development much like it participates in the preparation of the community's other land use regulations. It is the commission's responsibility to ensure that the policies accurately and adequately reflect the community's values and capabilities.

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### **The Planning Commission evaluates the policies to ensure that:**

- The policies address local concerns about the coastal zone
- The policies address controversial development projects adequately

- The policies reflect new information or new data
  - When new zoning or other land use regulations make current policies obsolete, the policies are deleted
  - The community supports the revision
- 

Local policies adopted by the state must be consistent with other land use-related plans. Other state and federal land use-related planning efforts include:

- ✓ Alaska Department of Fish and Game (ADFG) Special Area Management Plans
- ✓ Alaska Department of Natural Resources (DNR) Area Plans
- ✓ DNR State Forest Plans
- ✓ U.S. Forest Service (USFS) Plans
- ✓ U.S. Fish and Wildlife Service (USFWS) Propose Rules to Designate Critical Habitat Areas
- ✓ USFWS Refuge Management Plans
- ✓ National Park Service (NPS) Concept Plans
- ✓ Local Harbor Authority Plans
- ✓ Lease Sales by the DNR or Minerals Management Service

For more information refer to the ACMP Guidebooks 1-6. These guidebooks provide greater detail on the program. The ACMP website (<http://www.alaskacoast.state.ak.us/>) is an additional source of information.

### *Statewide Transportation Improvement Program*

The Alaska Department of Transportation and Public Facilities (ADOT&PF) has developed a public process for selecting projects to be included in the Statewide Transportation Improvement Program (STIP). The STIP is the State's plan for allocating funding for surface transportation – highways, transit, trails, and ferries – for a three-year period. Neither aviation nor ports and harbors projects are included in the STIP.

There are three broad spending categories affecting roads, ferries, trails, and transit. All projects for which funding is requested are first placed into one of these three categories.

**Category 1. National Highway System (NHS)** is the system of most important highways and ferry links between the state's population centers and economic centers, border crossings and intermodal facilities.

**Category 2. Community Transportation Program (CTP)** creates partnerships with local governments to build projects serving local and regional needs. This category includes state highways that are not considered NHS routes.

**Category 3. Trails and Recreational Access for Alaska (TRAAK)** projects improve access to recreational facilities, provide trails for transportation facilities and provide interpretative improvements along highways.

Requests for projects to be funded by the CTP and TRAAK programs are solicited statewide. Boroughs, cities, villages, transit providers, Native organizations and other local governments, private parties, and state and federal agencies are requested to make project nominations. The planning commission can participate in the CTP and TRAAK processes by helping their local government review nominations to ensure the projects serve local and regional needs. The planning commission's role is to review transportation projects from local, state, and federal agencies and evaluate each project as it relates to the local comprehensive plan goals and policies and local transportation plan recommendations.

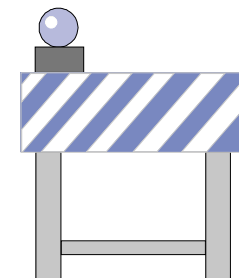
### *Sanitation Master Plans*

The extension of water and wastewater (sewage disposal) service into an area is one of the first steps in opening an area to development. It is also one of the first steps necessary for increasing the density of development in an area. Planning for water and wastewater systems is called "sanitation planning." The end product is a water and wastewater master plan, otherwise known as a sanitation master plan. Much of the work necessary for the



### **Does the sanitation master plan:**

- ✓ Economize on the costs of public facilities and services?
- ✓ Maintain a high quality of public services?
- ✓ Ensure that the eventual character of development is consistent with community values and vision?
- ✓ Maintain a desirable degree of balance among the various uses of land and development patterns?





master plan will be contained in the community's comprehensive plan – social and economic information (e.g. population and economic forecasts), physical environment and natural resources information (e.g. soils and hydrology), and community information (e.g. land ownership and future locations for residential, commercial and industrial uses). The sanitation master plan goals, objectives, and alternatives for implementation should also be directly linked to the community comprehensive plan goals, objectives, and policies for land use and development patterns.

Typically, the planning commission is involved at different stages in the sanitation master planning process. Their involvement should be at the start of the process when community input is gathered, during the evaluation of alternatives, during the selection of a system alternative and during the implementation phase and capital improvements program steps. In fact, the local subdivision code works hand-in-hand to implement the sanitation master plan.

### *Municipal Budget*

The key to planning implementation is the commitment of the municipality's fiscal resources to the operation of government and the achievement of community goals and objectives. The budget reflects the community's priorities for services and facilities. Implementation of the comprehensive plan can be reflected in the municipal budget in a number of ways:

### *Budget Reflects Plan Vision*

- Staff is available to carry out the planning objectives
- Capital projects defined in the CIP process are funded
- The planning commission is involved in the budget process

### *Design Review Standards*

The appearance of buildings, including signage, color, lighting, landscaping, and parking is achieved through a set of reasonable and comprehensive review standards adopted by ordinance. Typically the planning staff will administer the design review standards on smaller scale projects. For larger, more detailed projects, a design review board may be involved.

### *Floodplain Regulations*

Establishment of standards for construction in river floodplains and coastal areas complements local subdivision regulations by identifying flood hazard areas. The governing body should require the subdivider to delineate flood hazard areas on the face of the plat. Where appropriate and provided for by ordinance, mitigation measures, such as floodproofing, may be necessary. Participation in the National Flood Insurance Program (NFIP) may also be important in a community with historic



flood hazards and loss of life and property. Incorporation of flood hazard information into the comprehensive plan and land use regulations is critical.

### *State and Federal Planning Programs*

The Alaska Native Claims Settlement Act (ANCSA) was passed in 1971. The intent of ANCSA was to legislatively resolve aboriginal claims. There is controversy over extinguishing tribal rights. ANCSA established 13 regional “for profit” corporations and over 200 village corporations on a shareholder basis. Forty-four million acres of land were to be conveyed to corporations. Generally, village corporations own surface estate while regional corporations own subsurface estate of village lands and additional surface selections. There was a cash settlement of nearly \$1 billion as compensation for land appropriated by the state and federal government. ANSCA lands are considered public property subject to federal, state, and local planning and regulation.

Alaska National Interest Lands Conservation Act (ANILCA) of 1980 resulted from Section 17(d)2 of ANCSA. It specified that 80 million acres be placed in national parks, forests, wildlife refuges or wild and scenic river systems. Management units were created that are subject to comprehensive conservation plans or other management plans. Many areas of mineralization or timber were excluded from these conservation units.

However, limitations on access to some adjacent areas have become an issue. ANILCA provided the federal government with the right to manage subsistence resources and harvests on ANILCA lands.

The Alaska Department of Natural Resources (DNR) prepares state area plans (AS Title 38) for state-owned lands. The plans define recommendations for land classifications and management guidelines.

### *Historic Preservation*

In order to preserve the architecture and appearance of buildings in designated historic districts, the community must work with property owners, architects, and historians to define the district’s character. Subsequent standards can be developed to encourage and ensure the historic character is retained.

### *Environmental Impact Assessments*

Impact assessment can be very technical, but more and more communities and their planning commissions are being tasked with looking at impacts from proposed developments, such as new subdivisions and transportation projects. While in some cases the project proponent will be required by state and federal law to prepare an environmental assessment or impact statement, the commission must still be prepared to evaluate the applicant’s proposal and determine whether project will have a significant impact to their community. This is why it’s critical that the commission is familiar



“The day people stop bringing you their problems is the day you have stopped leading them.”

- Colin Powell,

*My American Journey*

with the community and its environmental resources, which together make up the character of the community or a project site. Effective environmental assessment includes comparing the environmental base, what a community or property is today, against predictable changes resulting from a new proposal.

### Conclusion

The goal of this guidebook was to adequately describe what it takes to be an effective planning commission in Alaska. The many concepts, processes, and terms necessary to the planning discipline have been included in this document. Planning is a collective effort between the citizens, elected officials, and the planning commission. If one group falls short in carrying out their responsibility, the entire community can be affected. When an effective and collaborative planning process flourishes in a community, the vision of the citizens, and its elected officials and leaders can be achieved.

In conclusion, planning commission service demands the best you can offer to your community.

**Absentee** – a commission member who is not in attendance at a meeting

**Abstain** – to refrain from casting a vote

**Accessory Use** – a permitted building or activity that is secondary to the main use on the same site. It is allowed without prior review or approval. For example, a smokehouse or tool shed on a single-family residential lot.

**Adjourn** – to close a particular session; to suspend a meeting or a proceeding to a future time

**Agenda** – a schedule of items intended to be take up at a meeting

**Appeal** – a request seeking relief from a decision already made by the commission or official

**Borough** – a form of regional municipal government

**Buffering** – cushioning, shielding, or protection between uses, such as vegetation

**Building Area** – the total square footage of a lot that is covered by a building, excluding steps, decks, and patios.

**Bylaws** – rules adopted by a commission which govern its procedure

**Capital Improvements Program** – a list or schedule of public projects that a city or borough intends to undertake over a specified period of time. Projects are prioritized, costs are estimated, and methods of financing are described. The capital improvements program should be consistent with policies in the comprehensive plan and should be updated annually.

**Chair** – the presiding officer of the commission or of a meeting or proceeding

**Charter** – the governing document of a home rule municipality

**City** – a form of municipal government

**City Council** – the legislative or governing body in cities

**Cluster Subdivision** – a cluster subdivision is a form of development that permits a reduction in lot area provided there is no increase in the number of lots permitted under the conventional subdivision or increase in the overall density of development.

**Commercial Use** – a use of land devoted to commercial or business purposes, such as retail sales, services, or business offices

**Comprehensive Plan** – a written legal document, which may include or be accompanied by graphics, adopted by the governing body containing policies that will guide land use and development in the community.

**Conditional Uses** – uses that are not permitted outright in the zoning ordinance but may be allowed in a zoning district after certain conditions are met which are designed to safeguard neighboring properties.

**Dedication** – the gift or donation of private property by the owner to a city or borough or other public body. A dedication is completed through the conveyance of written deed or title and a formal acceptance by the public body.

**Ex parte Contact** – any contact outside of the public hearing in a land use case by a member of the decision-making body and someone wishing to directly or indirectly influence the outcome of the case.

**Findings** – facts determined by the commission in reference to its decision, either on an application or on a particular phase of an application

**Floor area ratio (FAR)** – the gross floor area of all buildings or structures on a lot divided by the total lot area (FAR = total building floor area ÷ total lot area)

**Goal** – a statement of the values and desires of the citizens of an area. A goal provides the basis for subsequent objectives and policies.

**Industrial Use** – a use of land devoted to manufacturing or industrial processing

**Infrastructure** – physical improvements, structures, or installations which provide common services to a community or geographic area, e.g. water, sewer, gas mains, or electric power lines

**Local Government** – a city or borough in Alaska

**Majority** – more than half. On a public body, the majority is half the total membership plus one.

**Master Plan** – common use term for “comprehensive plan”

**Mayor** – the chief elected official in Alaska cities and boroughs

**Minutes** – the chronological record of the proceedings of a public body

**Motion** – an overture by a member of the commission by which the member attempts to bring a matter of business before the body. Also a request for a particular ruling by a party before an adjudicatory body

**Notice** – published information regarding an impending meeting, proceeding, or hearing giving at least time, date, place, and purpose

**Objective** – a specific and achievable attainment that is met in partial fulfillment of longer term goals.

**Plat, final** – an approved subdivision map that is filed in the district recorder's office. It must contain the information required by AS 29.40 as well as that required by local ordinances such as a legal description of all properties in the subdivision, street rights-of-way, easements, and lot lines. Final plat approval is usually given upon completion of the improvements or the posting of a bond guaranteeing construction of the improvements.

**Plat, preliminary** – a draft map showing the proposed layout of subdivision submitted to the staff and the platting authority for preliminary approval.

**Public Hearing** – a public proceeding at which the public is given the right and opportunity to speak regarding a particular matter or issue

**Quasi-judicial Action** – a judicial action taken by a public person or body (i.e., the planning commission) who is not a judge. It involves an official decision on the respective rights or claims of parties appearing before the body making the decision.

**Quorum** – the number of members of a body who, by law or rule, must be present in order that a meeting be convened

**Record** – a document kept in the ordinary course of business by a governmental unit. Also the written expression of the proceedings of the commission. Meeting minutes are one form of record.

**Rezone** – the reclassification of land from one land use zoning designation to another.

**Right-of-way** – is a legal right of passage over another's property and the area through which that right exists. It most commonly refers to the streets and sidewalks, trails, curbs and gutters (if applicable), and utilities.

**Setback** – the distance that a building must be set back from a property line or right-of-way. Setback requirements will often differ with the zoning district and are included in the zoning ordinance.

**Variance** – a waiver of the provisions of the zoning ordinance when strict application of the ordinance would cause exceptional, practical difficulties, or undue hardship to the property owner. Property standards in the ordinance are adjusted because the specific location, topography, shape, size or other environmental features of a lot make it impossible to comply with the zoning regulations as written. The variance allows the property owner to use his/her land at the same intensity and develop it for the same uses allowed others in the same zone.

**Zoning** – an application of the police power to regulate the use of land and the improvements on it for the protection of the public health, welfare, and safety. Zoning regulations establish standards for development and create a number of different zoning districts or classifications of land. Development and construction must be consistent with these criteria before being approved by the commission or the governing body.

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# Appendix A - sample Bylaws

## APPENDIX A

### Sample Planning Commission Bylaws

The following bylaws are hereby adopted by the Planning Commission of the municipality of [YOUR MUNICIPALITY], in order to:

1. Make the most efficient use of the time of the members, the planning staff, and any professional consultants, which may be hired.
2. Improve communications between the Commission and the public-at-large, including local residents, applicants for subdivision or construction permits and the other administrative agencies of [YOUR MUNICIPALITY] and the State of Alaska.
3. Balance the efforts of the Commission between response to applicants within [YOUR MUNICIPALITY] and the actual planning work necessary to guide the progressive development of [YOUR MUNICIPALITY] in the future.

BE IT RESOLVED THAT THE BYLAWS, AS HEREINAFTER SET FORTH, BE ADOPTED BY THE PLANNING COMMISSION of [YOUR MUNICIPALITY] to govern the proceedings on the commissioner.

The officers of the Planning Commission shall be Chairman, Vice-Chairman and Clerk, elected each year by a majority vote of the members of the Planning Commission at the first regular meeting in November.

#### SCHEDULE OF MEETINGS

##### Regular Meetings

The regular meetings of the Planning Commission of [YOUR

MUNICIPALITY] shall be at 7:30 P.M. on the second and fourth Tuesday of each month.

No new business will be considered after 11:00 P.M. unless agreed to by five members present and the meetings will adjourn promptly at 11:30 P.M. unless an extension is allowed by five of the members present.

The order of business shall be:

- I. Roll Call
- II. Approval of the Minutes
- III. Regular Agenda\*
- IV. Committee Reports
- V. Staff Report
- VI. Public Participation on Non-Agenda Item
- VII. Commission Comments and Questions
- VIII. Adjournment

Items up for reconsideration will be listed at the end of the agenda as a non-agenda item for Possible Reconsideration.

\*this includes variances; conditional use permits; plat approvals; recommendations on rezones; recommendations on plans, documents, studies and ordinances; other work.

#### Committee of the Whole

The third Tuesday of each month will be reserved for discussion of any and all internal matters of the Commission, specifically including reports and recommendations of the various subcommittees.

#### Special Meetings

May be called at any time by the Chair or three members provided required notice is given and published.

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### NOTICE OF MEETINGS

All regular and special meetings of the commission shall have seven days notice. Notice shall be posted in a newspaper of general circulation available in the community; at city hall; and, at least two other locations highly visible to the public. Emergency meetings shall be called in the same manner as the elected body.

A copy of the schedule of meetings shall be supplied to all local media as well as posted on the Municipal bulletin board. If a special meeting is called, the planning staff shall give appropriate notice to the media.

### COMMITTEES

The Chair of the Commission shall appoint such committees as deemed necessary. Committee membership shall, for each committee, consist of at least four Planning Commission members. The Planning Commission Chair shall appoint the committee chair. The Planning Commission Chair will not serve as a committee chair but will be a member, ex officio, of all committees and will coordinate their activities.

Committee Chairs shall have full responsibility for conducting the affairs of their committees and reporting same to the full Planning Commission. In addition, the chairs of their designated alternates shall act as spokesmen for their committees at all public hearings and meetings.

### Subdivision Review Committee

This shall be the official subdivision committee appointed by the Chairman with the approval of the Commission. It shall be the duty of this committee to study and assume responsibility

for all subdivision development including site plan and subdivision review.

All meetings of the Planning Commission or any of its committees shall be open to the public except for executive sessions.

At each regular meeting of the Planning Commission, the applicant and all persons having an interest in, or desiring to be heard upon any matter which is the subject of a specific public hearing, shall be given an opportunity to be heard during such public hearing portion of the meeting, and there shall be a time during regular meetings for members of the public to address the Planning Commission concerning any matter relevant to the Planning Commission's jurisdiction but not on the agenda. The time for such public participation, and any reasonable limitations thereon, shall be established from time to time by the Commission. Once public participation is closed, it cannot be reopened except by six votes.

There shall be no public participation in Committee of the Whole or committee sessions of the Planning Commission except as follows:

1. By those persons specifically scheduled in advance to meet with the Commission or Committee on a specific application or matter; or,
2. By those persons, and upon such terms as may be specifically permitted and authorized by a majority vote of the Commission or Committee conducting the meeting.

### RULES OF PROCEEDINGS

Meetings shall be conducted under Robert's Rules of Order and such modified or amended rules as may be adopted by the Planning Commission.

## Appendix A - sample Bylaws

The Commission has amended those rules as follows:

1. A motion does not require a second.
2. Any member may move for reconsideration.

### **STAFF ATTENDANCE**

A Department staff member will be expected to attend all public meetings, Committee of the Whole, and subcommittee meetings of the Planning Commission.



## APPENDIX B

### Alaska Statutes

#### Chapter 29.40. PLANNING, PLATTING, AND LAND USE REGULATION

##### Section:

10. Planning, platting and land use regulation
20. Planning commission
30. Comprehensive plan
40. Land use regulation
50. Appeals from administrative decisions
60. Judicial review
70. Platting regulation
80. Platting authority
90. Abbreviated plats and waiver
100. Information required
110. Plat procedure
120. Alteration or replat petition
130. Notice of hearing
140. Hearing and determination
150. Recording
160. Title to vacated area
170. Delegations
180. Prohibited acts; criminal penalties
190. Civil remedies and penalties
200. Subdivisions of state land

Sec. 29.40.010. Planning, platting, and land use regulation. (a) A first or second class borough shall provide for planning, platting, and land use regulation on an areawide basis.

(b) If a city in a borough consents by ordinance, the assembly may by ordinance delegate any of its powers and duties under this chapter to the city. The assembly may by ordinance, without first obtaining the consent of the city, revoke any power or duty delegated under this section.

Sec. 29.40.020. Planning commission. (a) Each first and second class borough shall establish a planning commission consisting of five residents unless a greater number is required by ordinance. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. A member shall be appointed by the borough mayor for a term of three years subject to confirmation by the assembly, except that a member from a home rule or first class city shall be selected from a list of recommendations submitted by the council. Members first appointed shall draw lots for one, two, and three year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

(b) In addition to the duties prescribed by ordinance, the planning commission shall

(1) prepare and submit to the assembly a proposed comprehensive plan in accordance with AS 29.40.030 for the systematic and organized development of the borough;

(2) review, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.40.040 .

Sec. 29.40.030. Comprehensive plan. a) The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

(1) statements of policies, goals, and standards;

(2) a land use plan;

(3) a community facilities plan;

(4) a transportation plan; and

(5) recommendations for implementation of the comprehensive plan.

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The

assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary.

Sec. 29.40.040. Land use regulation. (a) In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section may not be granted if

(1) special conditions that require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

Sec. 29.40.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, hearing officer, board of adjustment, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of

a hearing officer, or for the composition, appointment, and terms of office of a board of adjustment or other body established to hear appeals from administrative actions. The assembly may define proper parties and prescribe evidentiary rules, standards of review, and remedies available to the hearing officer, board of adjustment, or other body.

Sec. 29.40.060. Judicial review. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of a hearing officer, board of adjustment, or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal heard solely on the record established by the hearing officer, board of adjustment, or other body.

Sec. 29.40.070. Platting regulation. By ordinance the assembly shall adopt platting requirements that may include, but are not limited to, the control of

(1) form, size, and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage, and other public utility facilities and improvements;

(4) dedication of streets, rights-of-way, public utility easements and areas considered necessary by the platting authority for other public uses.

Sec. 29.40.080. Platting authority. (a) The assembly by ordinance shall establish a platting authority to administer subdivision regulations and to perform other duties as required by the assembly. The platting authority may consist of members of the planning commission or of other municipal residents.

(b) The assembly may by ordinance provide for an administrative official to act as the platting authority with regard to abbreviated plats.

Sec. 29.40.090. Abbreviated plats and waivers. (a) Notwithstanding other provisions of this chapter, the assembly shall by ordinance establish an abbreviated plat procedure for a plat that will

- (1) subdivide a single lot into not more than four lots;
- (2) provide legal and physical access to a public highway or street for each lot created by the subdivision;
- (3) not contain or require a dedication of a street, right-of-way, or other area;
- (4) not require a vacation of a public dedication of land or a variance from a subdivision regulation.

(b) The platting authority shall waive the preparation, submission for approval, filing, and recording of a plat on satisfactory evidence that the subdivision meets the requirements of (a) of this section and each lot created by the subdivision is five acres or larger.

Sec. 29.40.100. Information required. A plat must show

- (1) initial point of survey;
- (2) original or reestablished corners and their descriptions;
- (3) actual traverse showing area of closure and all distances, angles, and calculations required to determine initial point, corners, and distances of the plat; and
- (4) other information that may be required by ordinance.

Sec. 29.40.110. Plat procedure. (a) The platting authority shall approve or disapprove a plat within 60 days after it is filed, or shall return it to the applicant for modification or correction. Unless the applicant for plat approval consents to an extension of time, the plat is considered approved and a certificate of approval shall be issued by the platting authority on demand if the platting authority fails to act within 60 days.

(b) The platting authority shall state in writing its reasons for disapproval of a plat. If the platting authority approves a plat, the plat shall be acknowledged, filed, and recorded in accordance with AS 40.15.010 - 40.15.020.

Sec. 29.40.120. Alteration or replat petition. A recorded plat may not be altered or replatted except by the platting authority on petition of the state, the borough, a public utility, or the owners of a majority of the land affected by the alteration or replat. A platted street may not be vacated, except on petition of the state, the borough, a public utility, or owners of a majority of the land fronting the part of the street sought to be vacated.

The petition shall be filed with the platting authority and shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

Sec. 29.40.130. Notice of hearing. The platting authority shall fix a time for a hearing on an alteration or replat petition that may not be more than 60 days after the petition is filed. Notice shall be published by the platting authority stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice must generally describe the alteration or replat sought. The platting authority shall also mail a copy of the notice to each affected property owner who did not sign the petition.

Sec. 29.40.140. Hearing and determination. (a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation.

Sec. 29.40.150. Recording. If the alteration or replat is approved, the revised plat shall be acknowledged, filed, and recorded in accordance with AS 40.15.010 - 40.15.020.

Sec. 29.40.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or land bordering the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area that lies on one side of the boundary line shall attach to the abutting property on that side, and the street area that lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street that lies inside the limits of a platted addition attaches to the lots of the platted addition bordering on

the area. If a public square is vacated, the title to it vests in a city if it lies inside the city, and in the borough if it lies inside the borough but outside all cities. If the property vacated is a lot, title vests in the rightful owner.

(b) If the municipality acquired the street or other public area vacated for legal consideration or by express dedication to the municipality other than as a subdivision platting requirement, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid to the municipality on final vacation.

(c) The provisions of (a) and (b) of this section apply to home rule and general law municipalities.

(d) The council of a second class city located outside a borough may vacate streets, alleys, crossings, sidewalks, or other public ways that may have been previously dedicated or established when the council finds that the streets, alleys, crossings, sidewalks, or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

Sec. 29.40.170. Delegations. The planning commission and the platting authority may, as authorized by ordinance, delegate powers to hear and decide cases under this chapter, including, but not limited to, delegations to

(1) one or more members of the planning commission or platting authority;

(2) other boards or commissions;

(3) a hearing officer designated by the planning commission or platting authority.

Sec. 29.40.180. Prohibited acts; criminal penalties. (a) The owner of land located in a subdivision may not transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, filed, and recorded in accordance with this chapter. A person

may not file or record a plat or other document depicting subdivided land in a public recorder's office unless the plat or document has been approved by the platting authority.

(b) For the violation of a provision of this chapter, a subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a platting authority in the exercise of its powers under this chapter, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days.

Sec. 29.40.190. Civil remedies and penalties. (a) The municipality or an aggrieved person may institute a civil action against a person who violates a provision of this chapter, a subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a platting authority. In addition to other relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or threatened violation, the superior court shall grant the injunction.

(b) Each day that an unlawful act or condition continues constitutes a separate violation.

Sec. 29.40.200. Subdivisions of state land. (a) The subdivision requirements adopted under this chapter apply to a subdivision plat of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting authority. Subdivision ordinances and regulations adopted after the platting authority is notified by the commissioner of natural resources of a proposed sale of subdivided state land under AS 38.05 or AS 38.08 do not apply to the state land in the proposed sale.

(b) The platting authority shall approve and sign a subdivision plat of state land within 60 days after its receipt from the commissioner of natural resources unless the platting authority (1) determines that the plat does not comply with subdivision requirements; and

(2) notifies the commissioner of each determination of noncompliance within the 60-day period established in this subsection.

(c) The commissioner of natural resources may withdraw the

subdivision plat and amend it in response to the determination of noncompliance by the platting authority under (b) of this section. The platting authority shall respond within 30 days to the amendment or response from the commissioner of natural resources.

(d) Nothing in this section relieves the Department of Natural Resources of its obligations to provide legal access to a subdivision.

(e) This section applies to home rule and general law municipalities.





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